and Healy, Circuit Judges

No. 10540

United States
Circuit Court of Appeals
For the Ninth Circuit.

ARON ROSENSWEIG and
ABE ROSENSWEIG,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 590 Folsom St., San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

JOHN W. PRESTON and
SAMUEL MIRMAN
712 Rowan Bldg.
458 S. Spring St.
Los Angeles, Calif.

For Appellee:

CHARLES H. CARR, United States Attorney
RAY H. KINNISON, Assistant United States Attorney
600 U. S. Post Office and Court House Bldg.
Los Angeles 12, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 15th day of July in the year of our Lord one thousand nine hundred *and three.*

Present: The Honorable: C. E. Beaumont, District Judge.

No. 16,108—Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARON ROSENSWEIG and
ABE ROSENSWEIG,

Defendants.

ORDER THAT INFORMATION BE FILED AND FIXING BOND

On motion of R. F. Duni, Esq., Assistant U. S. Attorney, appearing for the Government, who presents an Information to the Court in this cause, it is ordered that the said Information be filed, that the bond of each of the defendants Aron Rosensweig and Abe Rosensweig be, and it hereby is, fixed in the sum of $1,000.00 and that a bench warrant be issued for the apprehension of the said defendants. F. M. Harvey, reporter, present and reporting the proceedings. [2]

$1,000 Bond B/W

This Information contains six (6) Counts charging Aron Rosensweig and Abe Rosensweig with the violation of Revised Maximum Price Regulation No. 169 and Revised Maximum Price Regulation No. 148, issued pursuant to the Emergency Price Control Act of 1942. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Five Thousand Dollars ($5,000) or both, with no minimum penalty provided).

ARON ROSENSWEIG
2501 East Vernon,
Vernon, California

ABE ROSENSWEIG
2501 East Vernon
Vernon, California [3]

In the District Court of the United States, Southern District of California, Central Division

No. 16108 Crim.

UNITED STATES OF AMERICA,
Plaintiff.

vs.

ARON ROSENSWEIG, and
ABE ROSENSWEIG,
Defendants.

INFORMATION

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California,

Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit: [4]

all but 1 & 3 dismissed (p

COUNT ONE

That on or about the 7th day of May, 1943, in the City of Long Beach, County of Los Angeles, State of California, in the district aforesaid and in the Central Division thereof and within the jurisdiction of this Court, Aron Rosensweig, and Abe Rosensweig, doing business as the Central Packing Company, did knowingly, wilfully and unlawfully offer for sale, sell and deliver to E. E. Surhart at 501 Daisy Avenue, Long Beach, California, one side of U.S. Grade A beef weighing 296 pounds for the sum of $88.91, which said side of U.S. Grade A beef weighing 296 pounds had a maximum price of $68.18 under the provisions of Revised Maximum Price Regulation 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942; contrary to the form and effect of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [5]

COUNT TWO

That on or about the 7th day of May, 1943, in the City of Long Beach, County of Los Angeles, State of California, in the district aforesaid and in the Central Division thereof and within the jurisdiction of this Court, Aron Rosensweig, and Abe Rosensweig, doing business as Central Packing Company, did wilfully, knowingly and unlawfully fail and neglect to make and preserve complete and accurate records of the sale of one side of U. S. Grade A beef weighing 296 pounds to E. E. Surhart, showing the date thereof, the name and address of the buyer, the quantity and grade of said side of U. S. Grade A beef and the price charged or received therefor, in that defendants made an entry in the records of the Central Packing Company on Central Packing Company Invoice No. 9698 dated May 7, 1943, showing the sale of said side of U. S. Grade A beef to E. E. Surhart for the price of $68.18, while the actual price charged and received for said side of U. S. Grade A beef was $88.91; all of which facts as to the price charged and received for said side of Grade A beef were known to the defendants at the time of the making of said invoice; that said entry on said invoice was false at the time of making of said record, in violation of the provisions of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942; contrary to the form and effect

of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [6]

COUNT THREE

That on or about April 15, 1943, in the City of Long Beach, County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Aron Rosensweig and Abe Rosensweig, doing business as Central Packing Company, hereinafter called "the defendants", did make a sale of certain meat products to E. E. Surhart; that said defendants did knowingly, wilfully and unlawfully give a false invoice covering said sale of said meat products, in that said defendants did give an invoice covering said sale on Central Packing Company invoice No. 9373, dated April 15, 1943, showing the total price charged and received for the meat products listed on said invoice No. 9373 to be $164.71, whereas in truth and in fact, as the defendants then and there well knew, the total price charged and received for the meat items shown in invoice No. 9373 was $189.46, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended,

issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [7]

COUNT FOUR

That on or about April 24, 1943, in the City of Long Beach, County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Aron Rosensweig and Abe Rosensweig, doing business as Central Packing Company, hereinafter called "the defendants", did make a sale of certain meat products to E. E. Surhart; that said defendants did knowingly, wilfully and unlawfully give a false invoice covering said sale of said meat products, in that said defendants did give an invoice covering said sale on Central Packing Company invoice No. 9439, dated April 24, 1943, showing the total price charged and received for the meat products listed on said invoice No. 9439 to be $292.13, whereas in truth and in fact, as the defendants then and there well knew, the total price charged and received for the meat items shown in invoice No. 9439 was $354.46, in violation of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant

to Section 2 of the Emergency Price Control Act of 1942, and in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [8]

COUNT FIVE

That on or about May 25, 1943, in the City of Long Beach, County of Los Angeles, State of California, in the District aforesaid and in the Central division thereof, and within the jurisdiction of this Court, Aron Rosensweig and Abe Rosensweig, doing business as Central Packing Company, hereinafter called "the defendants", did wilfully, knowingly and unlawfully fail and neglect to make and preserve complete and accurate records of the sale of one U. S. Grade A beef carcass, weighing 538 pounds, to Powell & Dinsmore, Long Beach, California, showing the date thereof, the name and address of seller, the grade and weight of said U. S. Grade A beef carcass, and the price charged or received therefor, in that defendants made an entry in the records of Central Packing Company on Central Packing Company invoice No. 9698, dated May 25, 1943, showing the sale of said Grade A beef carcass to Powell & Dinsmore for the price of $123.75, while

the actual price charged and received for said Grade A beef carcass was $161.40, all of which facts as to the price charged and received for said U. S. Grade A beef carcass were known to the defendants at the time of the making of said invoice; that said entry on said invoice was false at the time of making *aid* records, in violation of the provisions of Revised Maximum Price Regulation No. 169 (7 Fed. Reg. 10381), as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [9]

COUNT SIX

That on or about May 7, 1943, in the City of Long Beach, County of Los Angeles, State of California, in the District aforesaid, and in the Central Division thereof, and within the jurisdiction of this Court, Aron Rosensweig and Abe Rosensweig, doing business as Central Packing Company, hereinafter called "the defendants", did make a sale of certain meat products to Arrow Meat Company, of Long Beach, California; that said defendants did knowingly, wilfully and unlawfully give a false invoice covering said sale of said meat products, in that said defendants did give an invoice covering said sale on Central Packing Company invoice No. 9556, dated

May 7, 1943, showing the total price charged and received for the meat products listed on said invoice No. 9556 to be $184.52, whereas in truth and in fact, as the defendants then and there well knew, the total price charged and received for the meat items shown on invoice No. 9556 was $206.70, in violation of Revised Maximum Price Regulation No. 148 (7 Fed. Reg. 8609) as amended, issued by Leon Henderson as Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942 (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Wherefore, said United States Attorney prays that process of this Court be issued against Aron Rosensweig and Abe Rosensweig and that they be dealt with according to law.

CHARLES H. CARR
United States Attorney
By CHARLES H. VEALE
Assistant United States
Attorney [10]

VERIFICATION

State of California
County of Los Angeles
United States of America—ss.

George Vallance, being first duly sworn, upon oath deposes and says:

That he is an employee of the United States Government, to-wit, an Investigator for the Office of Price Administration, an agency of the United States Government; that in the course of his duty as in Investigator for the Office of Price Administration he made an investigation of the matters set forth and mentioned in the above and foregoing Information against Aron Rosensweig and Abe Rosensweig; that he has read the above and foregoing Information and knows the contents thereof and that the matters set forth therein are true to the best of his knowledge and belief.

GEORGE VALLANCE

Subscribed and Sworn to before me this 14th day of July, 1943

[Notarial Seal] ESTHER BLAISDELL

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires May 14, 1946

[Endorsed]: Filed July 15, 1943. [11]

[Title of District Court and Cause.]

DEMURRER

The defendants, Aron Rosensweig and Abe Rosensweig, demur to the information herein upon the following grounds:

1. That said information and each and every count thereof do not state facts sufficient to consti-

tute an offense against the United States or the laws thereof.

2. That the affidavit supporting the information set forth in counts 1, 2, 3, 4, 5 and 6 is not sufficiently definite so as to inform the defendants as to whether or not affiant was personally present at the time the alleged acts set out in said counts were committed.

3. That the counts setting forth the information, mainly counts 1, 2, 3, 4, 5 and 6, do not sufficiently state whether or not the sales were made by the defendants jointly, or by one of the defendants, or by one of the defendants acting as the agent of the other defendant or of both of them.

4. That the Emergency Price Control Act of 1942, upon [12] which the information is based, is an improper use of the war power by Congress and is also an improper delegation by Congress of its legislative function to an administrative agency.

5. That the Emergency Price Control Act of 1942 and the Revised Maximum Price Regulation No. 169 and the Revised Maximum Price Regulation No. 148 deprive defendants of their rights under the fourth amendment and the fifth amendment to the Constitution of the United States of America.

Wherefore, defendants demand judgment dismissing the information and discharging them from custody.

Yours respectfully,
SAMUEL MIRMAN
Attorney for demurring defendants.

Dated: July 27, 1943.

To: Charles H. Carr, Esq.,
United States Attorney

POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

1. The U. S. District Court can pass on the constitutionality of any act of Congress.

Brown v. O'Connor 49 Federal Supplement 943

2. By fixing price of commodity to be sold at an arbitrary figure derived by the Office of Price Administrator, the defendants are deprived of their property without due process of law.

Fourth Amendment to the Constitution of United States of America.

Fifth Amendment to the Constitution of United States of America.

3. If information is made the basis of arrest, there must be a supporting affidavit setting forth the facts on which the information is based.

Weeks v. United States 216 F 292.

Volner v. United States 2 F2nd 551.

[Endorsed:] Filed Jul. 27, 1943. [13]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the

Court Room thereof, in the City of Los Angeles on Monday the 2nd day of August in the year of our Lord one thousand nine hundred *and three.*

Present: The Honorable Ben Harrison District Judge.

[Title of Cause.]

No. 16,108-Crim.

PLEA OF NOT GUILTY

This cause coming on for hearing on motion of defendants to quash the Information herein, plea in abatement, demurrer to Information, and for plea of the defendants; Ray Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; Samuel Mirman, Esq., appearing as counsel for the defendants; John Q. Bybee, Court Reporter, being present and reporting the proceedings; the defendants Aron Rosensweig and Abe Rosensweig being present in Court:

Attorney Kinnison states he submits the case without argument; Attorney Mirman argues to the Court as to the law of this case; the Court makes a statement and orders said motion to quash, plea in abatement, and demurrer, overruled; an exception is allowed each defendant to the rulings of the Court.

Each defendant now enters his separate plea of not guilty to the six charges contained in the Information, and it is ordered that this cause be, and it hereby is, set for trial for August 13, 1943, at 10 A. M., before a jury. [14]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 11th day of August in the year of our Lord one thousand nine hundred *and three*.

Present: The Honorable Ben Harrison District Judge.

[Title of Cause.]

No. 16,108-Crim.

PLEA OF GUILTY ON COUNTS 1 AND 3

This cause coming on for change of plea of the defendants Aron Rosensweig and Abe Rosensweig; Ray Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; Samuel Mirman, Esq., appearing as counsel for the defendants; C. W. McClain, Court Reporter, being present and reporting the proceedings; the said defendants being present in court on bond:

On motion of Attorney Mirman, John W. Preston, Esq., is associated as counsel for the defendants.

Attorney Preston makes a statement. With the permission of the Court and U. S. Attorney, each of the said defendants now changes his plea from not guilty to guilty to counts 1 and 3, and it is ordered that this cause be, and it hereby is, referred to the Probation Officer for investigation and report, and that hearing thereon and sentence on counts 1 and 3 is continued to August 30, 1943, at 10 A. M.

Counts 2, 4, 5, and 6 are ordered off calendar. [15]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 30th day of August in the year of our Lord one thousand nine hundred *and three.*

Present: The Honorable: Ben Harrison District Judge.

[Title of Cause.]

No. 16,108-Crim.

HEARING ON REPORTS OF PROBATION OFFICER

This cause coming on for hearing on reports of the Probation Officer and sentence of the defendants Aron Rosensweig and Abe Rosensweig on counts 1 and 3 of the Information herein; Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; Samuel Mirman and John W. Preston, Esqs., appearing as counsel for the defendants; H. A. Dewing, Court Reporter, being present and reporting the proceedings; the defendants being present in Court; Attorney Preston makes a statement on behalf of the defendants; Attorney Kinnison makes a statement; the Court makes a statement and pronounces judgment against the defendants as follows: [16]

District Court of the United States, Southern District of California, Central Division.

No. 16108 Criminal Information in six counts for violation of U.S.C., Title

UNITED STATES

vs.

ARON ROSENSWEIG

Secs. Emergency Price Control Act of 1942.

JUDGMENT AND COMMITMENT

On this 30th day of August, 1943, came the United States Attorney, and the defendant Aron Rosensweig appearing in proper person, and by his attorneys, Samuel Mirman and John W. Preston, Esqs., and,

The defendant having been convicted on his plea of Guilty of the offense charged in the Information in the above-entitled cause, to wit: Count one; did knowingly, wilfully and unlawfully offer for sale, sell and deliver to E. E. Surhart, one side of beef for sum $88.91, which side of beef had a maximum price of $68.18; etc., and Count three; did knowingly, wilfully and unlawfully give a false invoice No. 9373, to E. E. Surhart, etc., as more fully set forth in the said two counts of the Information; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the

contrary being shown or appearing to the Court, it Is By the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of thirty (30) days in a jail and pay a fine unto the United States of America in the sum of One thousand ($1000.) Dollars on count one; and it is further ordered that the imposition of sentence on count three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years commencing at the expiration of the sentence on count one on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that execution of the above judgment is stayed for the period of five days from today at 10 A. M. Counts 2, 4, 5 and 6 are ordered dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein on count one.

(Signed) BEN HARRISON
United States District Judge.

Rec'd 9-2-43.

[Endorsed:] Filed Aug 30, 1943. [17]

District Court of the United States, Southern District of California, Central Division.

No. 16108 Criminal Information in six counts for violation of U.S.C., Title

UNITED STATES

vs.

ABE ROSENSWEIG

Secs. Emergency Price Control Act of 1942.

JUDGMENT AND COMMITMENT

On this 30th day of August, 1943, came the United States Attorney, and the defendant Abe Rosensweig appearing in proper person, and by his attorneys, Samuel Mirman and John W. Preston, Esqs., and,

The defendant having been convicted on his plea of Guilty of the offense charged in the Information in the above-entitled cause, to wit: Count one; did knowingly, wilfully and unlawfully offer for sale, sell and deliver to E. E. Surhart, one side of beef for sum $88.91, which side of beef had a maximum price of $68.18; etc., and Count three; did knowingly, wilfully and unlawfully give a false invoice No. 9373, to E. E. Surhart, etc., as more fully set forth in the said two counts of the Information; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby ordered to pay a fine unto the United States of America in the sum of one thousand ($1000.) dollars on count one; and it is further ordered that the imposition of sentence on count three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years after the payment of said fine on count one on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that execution of the above judgment is stayed for the period of five days from today at 10 A. M. Counts 2, 4, 5 and 6 are ordered dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein if said fine on count one is not paid.

(Signed) BEN HARRISON
United States District Judge.

Rec'd. 9-2-43.

[Endorsed:] Filed Aug 30, 1943. [18]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thurs. the 2nd day of Sept. in the year of our Lord one thousand nine hundred *and three.*

Present: The Honorable Ben Harrison District Judge.

[Title of Cause.]

No. 16,108-Crim.

ORDER DENYING PLEA TO WITHDRAW PLEA OF GUILTY AND ALSO STAYING SENTENCE FOR FIVE DAYS.

This cause coming on for hearing on motion of defendants for an order vacating judgments, setting aside sentences, granting defendants the right to withdraw their plea of guilty and to re-enter their pleas of not guilty, and for a new trial, pursuant to notice and motion filed August 31, 1943; Chas. H. Carr, Esq., United States Attorney, and Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; John W. Preston and Samuel Mirman, Esqs., appearing as counsel for the defendants; C. W. McClain, Court Reporter, being present and reporting the proceedings; Attorney Preston is called, sworn, and testifies, and argues; Attorney Carr argues; Attorney Preston argues further. It is ordered that this matter stand submitted.

Later, it is ordered that motion of defendants for order vacating judgments and setting aside sentences, motion of defendants for order granting defendants the right to withdraw their plea of guilty, and to re-enter their pleas of not guilty, and motion for a new trial, be, and the same hereby are, denied; exception to defendants.

It is ordered that execution of sentences of defendants be, and it hereby is, stayed for an additional period of five days. [19]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Aron Rosensweig, 2501 East Vernon Avenue, Los Angeles, California.

Name and Address of Appellant's Attorneys:

John W. Preston and Samuel Mirman, 712 Rowan Building, 458 South Spring Street, Los Angeles, California.

Offense: Violation of Emergency Price Control Act of 1942, 56 Stat. 23, January 30, 1942. Count One: Did knowingly, wilfully and unlawfully offer for sale, sell and deliver to E. E. Surhart, one side of beef for sum $88.91, which side of beef had a maximum price of $68.18; etc., and Count Three: Did knowingly, wilfully and unlawfully give a false invoice No. 9373, to E. E. Surhart, etc., as more fully set forth in the said two counts of the Information.

Date of Judgment: August 30, 1943. [20]

Brief Description of Judgment or Sentence:

That defendant is guilty of the offense as charged in Counts One and Three of the Information and Counts 2, 4, 5 and 6 dismissed; that defendant be imprisoned for thirty (30) days in a jail and pay a fine unto the United States of America in the sum of One Thousand ($1000.00) Dollars on Count One; and it is further ordered that the imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years commencing at the expiration of the sentence on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

Name of Prison Where Now Confined If Not on Bail:

Remanded and now held by United States Marshal.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

I elect not to enter upon the service of sentence pending appeal.

Dated: September 3rd, 1943.

ARON ROSENSWEIG

Appellant

GROUND OF APPEAL:

1. That the Information and each count thereof fail to charge a public offense against the laws of the United States of America.

2. That the trial court should have sustained appellant's demurrer to the Information and to each count thereof.

3. That the Information and each count thereof fail to state facts sufficient to constitute a public offense against the laws of the United States of America.

4. That the trial court should have granted appellant's motion to quash the Information.

5. That the Emergency Price Control Act of 1942 (56 Stats. 23, [21] January 30, 1942) and particularly Sections 2 and 201, are void as an attempted delegation of legislative power to an Administrator in violation of Article One, Section One of the Constitution of the United States of America.

6. That the Emergency Price Control Act of 1942 and particularly Section 2 thereof, in delegating power to the Price Administrator to establish and maintain maximum prices for commodities, violates Article One, Section One, of the Constitution of the United States of America and is void in that it fails to prescribe adequate standards to guide the Administrator in the exercise of the power granted.

7. The Emergency Price Control Act, as applied to appellant, denies him due process of law in derogation of the Fifth Amendment to the Constitution of the United States of America, and is therefore unconstitutional and void.

8. That Maximum Price Regulation 169, promulgated by the Price Administrator, fixing maximum wholesale prices for beef, is violative of the Fifth Amendment to the Constitution of the United States and void in that the Administrator, in fixing such prices, failed to give due consideration to the various factors affecting cost of production and distribution of meat in the industry as a whole.

9. That the Emergency Price Control Act of 1942 denies appellant the due process of law guaranteed him by the Fifth Amendment to the Constitution of the United States in that by Secs. 203 and 204(d) of said Act, the forum in which appellant is prosecuted for a violation of said Act and the Maximum Price Regulation promulgated pursuant thereto, is precluded from questioning the validity of said Act and Regulation.

10. That the Emergency Price Control Act of 1942, and particularly sections 2 and 3 thereof, are as to appellant void in that arbitrary, unreasonable and discriminatory classifications of commodities and prices are created in violation of the Fifth Amendment to the [22] Constitution of the United States.

11. That Maximum Price Regulation 169, for a violation of which appellant was convicted, deprives appellant of due process of the Fifth Amendment to the Constitution of the United States in that said Regulation unlawfully classifies appellant as a wholesaler of a commodity processed from an agricultural commodity.

12. That the failure of the Price Administrator to fix or regulate the price of livestock prior to promulgating Maximum Price Regulation 169, for a violation of which appellant was convicted, rendered said Regulation invalid because in violation of the Fifth Amendment to the Constitution of the United States.

13. That the trial court was without jurisdiction to enter said judgment and sentence as to Appellant because of the promises made to the Appellant by the Assistant United States District Attorney that the Probation Officer, if Appellant would plead guilty to two counts, would recommend to the Judge of said Court that a fine of not to exceed One Hundred Twenty-five ($125.00) Dollars on each Count of the Information so plead to by Appellant, would be imposed.

14. That the trial court erred and committed an abuse of discretion in refusing to vacate the judgment and sentence as to Appellant, grant him a new trial, and permit him to withdraw his plea of guilty and enter a plea of not guilty to each Count of the Information.

[Endorsed]: Filed Sept. 3, 1943. [23]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Abe Rosensweig, 2501 East Vernon Avenue, Los Angeles, California.

Name and Address of Appellant's Attorneys:

John W. Preston and Samuel Mirman, 712 Rowan Building, 458 South Spring Street, Los Angeles, California.

Offense: Violation of Emergency Price Control Act of 1942, 56 Stat. 23, January 30, 1942. Count One: Did knowingly, wilfully and unlawfully offer for sale, sell and deliver to E. E. Surhart, one side of beef for sum $88.91, which side of beef had a maximum price of $68.18; etc., and Count Three: Did knowingly, wilfully and unlawfully give a false invoice No. 9373, to E. E. Surhart, etc., as more fully set forth in the said two counts of the Information.

Date of Judgment: August 30, 1943. [24]

Brief Description of Judgment or Sentence:

That defendant is guilty of the offense as charged in Counts One and Three of the Information and Counts 2, 4, 5 and 6 dismissed; that defendant pay a fine unto the United States of America in the sum of One Thousand ($1,000.00) Dollars on Count One; and that the imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years after the payment of said fine on Count One on the condition that the defendant shall not

wilfully violate any of the price regulations or any law made to supercede them.

Name of Prison Where Now Confined If Not on Bail:

Remanded and held by the United States Marshall if said fine on Count One is not paid within five days.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

I elect not to enter upon the service of sentence pending appeal.

Dated: September 3rd, 1943.

ABE ROSENSWEIG
Appellant

GROUND OF APPEAL:

1. That the Information and each count thereof fail to charge a public offense against the laws of the United States of America.

2. That the trial court should have sustained appellant's demurrer to the Information and to each count thereof.

3. That the Information and each count thereof fail to state facts sufficient to constitute a public offense against the laws of the United States of America.

4. That the trial court should have granted appellant's motion to quash the Information.

5. That the Emergency Price Control Act of

1942 (56 Stats. 23, [25] January 30, 1942) and particularly Sections 2 and 201, are void as an attempted delegation of legislative power to an Administrator in violation of Article One, Section One of the Constitution of the United States of America.

6. That the Emergency Price Control Act of 1942 and particularly Section 2 thereof, in delegating power to the Price Administrator to establish and maintain maximum prices for commodities, violates Article One, Section One, of the Constitution of the United States of America and is void in that it fails to prescribe adequate standards to guide the Administrator in the exercise of the power granted.

7. The Emergency Price Control Act, as applied to appellant, denies him due process of law in derogation of the Fifth Amendment to the Constitution of the United States of America, and is therefore unconstitutional and void.

8. That Maximum Price Regulation 169, promulgated by the Price Administrator, fixing maximum wholesale prices for beef, is violative of the Fifth Amendment to the Constitution of the United States and void in that the Administrator, in fixing such prices, failed to give due consideration to the various factors affecting cost of production and distribution of meat in the industry as a whole.

9. That the Emergency Price Control Act of 1942 denies appellant the due process of law guaranteed him by the Fifth Amendment to the Constitution of the United States in that by Secs. 203 and

204(d) of said Act, the forum in which appellant is prosecuted for a violation of said Act and the Maximum Price Regulation promulgated pursuant thereto, is precluded from questioning the validity of said Act and Regulation.

10. That the Emergency Price Control Act of 1942, and particularly Sections 2 and 3 thereof, are as to appellant void in that arbitrary, unreasonable and discriminatory classifications of commodities and prices are created in violation of the Fifth Amendment to the [26] Constitution of the United States.

11. That Maximum Price Regulation 169, for a violation of which appellant was convicted, deprives appellant of due process of the Fifth Amendment to the Constitution of the United States in that said Regulation unlawfully classifies appellant as a wholesaler of a commodity processed from an agricultural commodity.

12. That the failure of the Price Administrator to fix or regulate the price of livestock prior to promulgating Maximum Price Regulation 169, for a violation of which appellant was convicted, rendered said Regulation invalid because in violation of the Fifth Amendment to the Constitution of the United States.

13. That the trial court was without jurisdiction to enter said judgment and sentence as to appellant because of the promises made to the appellant by the Assistant United States District Attorney that the Probation Officer, if appellant would plead guilty to two counts, would recommend to the Judge

of said Court that a fine of not to exceed One Hundred Twenty-five ($125.00) Dollars on each County of the Information so plead to by appellant, would be imposed.

14. That the trial court erred and committed an abuse of discretion in refusing to vacate the judgment and sentence as to Appellant, grant him a new trial, and permit him to withdraw his plea of guilty and enter a plea of not guilty to each Count of the Information.

[Endorsed]: Filed Sept. 3, 1943. [27]

[Title of District Court and Cause.]

PETITION FOR ORDER FIXING BAIL PENDING APPEAL AND FOR ORDER STAYING EXECUTION OF SENTENCE TO PAY FINE PENDING BAIL

To the Honorable District Court of the United States in and for the Southern District of California, Central Division:

The petition of the defendants, Aron Rosensweig and Abe Rosensweig, respectfully shows:

1. That judgment was pronounced against them, and each of them, on the 30th day of August, 1943, upon their pleas of guilty to Counts One and Three of the Information on file in said cause; that the judgment as to defendant Aron Rosensweig was in substance as follows: That defendant is guilty of the offenses charged in Counts One and Three of

the Information, and that defendant be imprisoned for thirty (30) days in a jail and pay a fine unto the United States of America in the sum of One Thousand ($1,000.00) Dollars on Count One; and it is further ordered that the imposition of sentence on Count Three is suspended for the period of Two (2) years and defendant is placed on probation for said period of two [28] years commencing at the expiration of the sentence on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

That the judgment as to defendant Abe Rosensweig was in substance as follows: That defendant is guilty of the offenses charged in Counts One and Three of the Information and defendant is ordered to pay a fine unto the United States of America in the sum of One Thousand ($1,000.00) Dollars on Count One; and it is further ordered that the imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years after the payment of said fine on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

2. That on the 2nd day of September, 1943, the Court denied their respective motions for orders vacating judgments, setting aside sentences, granting defendants the right to withdraw their pleas of guilty and to re-enter their pleas of not guilty, and for a new trial.

3. That on the 3rd day of September, 1943, the defendants filed herein their respective notices of appeal.

4. That defendants have specified as their grounds for appeal the following, to wit:

(a) That the Court should have sustained the demurrers of defendants and granted their motions to quash the Information.

(b) That the Emergency Price Control Act of 1942 is an unlawful delegation of legislative power; that said Act and Maximum Price Regulation No. 169, promulgated pursuant thereto, deprive defendants of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(c) That the Court deprived defendants of due process of law by its order denying defendant's motions to vacate judgment, sentence and permit the defendants and each of them to withdraw their pleas of guilty and enter their pleas of not guilty.

[29]

5. That the said appeals and each of them involve substantial questions of law which should be determined by an Appellate Court.

6. That the defendants have heretofore deposited in the registry of this Court the fines imposed upon them, to wit: The sum of One Thousand ($1,000.00) Dollars each.

7. That it is proper in this case that the defendant Aron Rosensweig be admitted to bail for the sum of One Thousand ($1,000.00) Dollars and that

the defendant Abe Rosensweig be allowed to go free upon his own recognizance pending said appeal.

8. That cost bonds in the sum of Two Hundred Fifty ($250.00) each should authorize the Court to grant a stay of execution upon said judgments pending said appeal.

Wherefore, defendants pray for an order fixing bail for the defendants and each of them pending the appeal herein, and for an order staying the execution of sentence as to each of them to pay fines, and that such stay be in operation until the final determination of said appeals.

JOHN W. PRESTON and
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for Defendants.

[Endorsed]: Filed Sept. 7, 1943. [30]

[Title of District Court and Cause.]

ORDER ADMITTING DEFENDANTS TO BAIL AND STAYING EXECUTION UPON THE FINES IMPOSED UPON THEM

In this cause, it appearing to the Court that the defendants were convicted on the 30th day of August, 1943, upon Counts One and Three of the Information and the judgment of the Court was as follows:

That defendant Aron Rosensweig is guilty of the offenses charged in Counts One and Three of the Information, and that defendant be imprisoned for

thirty (30) days in a jail and pay a fine unto the United States of America in the sum of One Thousand ($1,000.00) Dollars on Count One; and it is further ordered that the imposition of sentence on Count Three is suspended for the period of Two (2) years and defendant is placed on probation for said period of two years commencing at the expiration of the sentence on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

That the judgment as to defendant Abe Rosensweig was in [31] substance as follows: That defendant Abe Rosensweig is guilty of the offenses charged in Counts One and Three of the Information and defendant is ordered to pay a fine unto the United States of America in the sum of One Thousand ($1,000.00) Dollars on Count One; and it is further ordered that the imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years after the payment of said fine on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

It further appearing that the defendants and each of them have duly filed herein their notices of appeal to the Circuit Court of Appeals, Ninth Circuit, and it further appearing that the said defendants and each of them have deposited in the registry of this Court the amount of said fines so imposed as

aforesaid, to wit: the sum of One Thousand ($1,000.00) Dollars each.

By reason of the above and foregoing and upon good cause otherwise appearing.

It Is Now Hereby Ordered that the defendant Aron Rosensweig be admitted to bail during the pendency of his said appeal upon the giving of a bond executed by a qualified surety company in the sum of One Thousand ($1,000.00) Dollars; that the defendant Abe Rosensweig be and he is hereby released upon his own recognizance pending said appeal. Defendants are to deposit $1000 each in the registry of this court, pending appeal, to guarantee payment of the fines imposed, if the convictions are finally affirmed or if the appeals respectively be dismissed.

That the execution of the respective sentences to pay fines in said causes, be and the same is hereby stayed upon the execution by each of the defendants of a cost bond on appeal with the usual provisions and obligations in the sum of Two Hundred Fifty ($250.00) Dollars.

Dated, Sept. 7, '43.

PAUL J. McCORMICK
Judge

[Endorsed]: Filed Sept. 7, 1943. [32]

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

[Stamped in Margin]: This Bond shall be void if in excess of $1,000.00.

[Stamped in Margin]: This Bond shall be void if issued after Sep 10 1943.

Know All Men By These Presents:

That I, Aron Rosensweig of the City of Los Angeles, California, as principal and the National Automobile Insurance Company, a corporation, as surety, are jointly and severally held firmly bound unto the United States of America in the sum of One Thousand and no/100 Dollars, for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

The condition of the foregoing obligation is as follows:

Whereas, later, to-wit, on the 30 day of August, 1943, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said court in which the United States of America was plaintiff and Aron Rosensweig was defendant, a Judgment and sentence was made, given, rendered and entered against the said Aron Rosensweig, in the above entitled action whereas he was convicted as charged of violation of U.S.C. Title Emergency Price Control Act of 1942.

Whereas, in said judgment and sentence, so made, given, rendered and entered against said Aron Rosensweig, he was by said judgment sentenced to imprisonment for the period of thirty days in a jail and pay a fine unto the United States of America

in the sum of One Thousand Dollars all on count one and imposition of sentence on count three was suspended for two years and the defendant placed on probation for two years commencing at the expiration of the sentence on count one of the information. [33]

Whereas, the said Aron Rosensweig has filed a notice of appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Aron Rosensweig has been admitted to bail pending the decision upon said appeal, in the sum of $1,000.00.

Now, therefore, the condition of this obligation are such that if said Aron Rosensweig shall appear in person, or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his appeal; and if the said Aron Rosensweig shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit and if said Aron Rosensweig shall surrender himself in execution of said judgment and sentence, if the judgment and sentence be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit; and if the said Aron Rosensweig will appear for trial in the District Court of the United States, in and for the Southern District of

California, Central Division, on such day or days as may be appointed for retrial by said District Court, if the said judgment and sentence against him be reversed,

Then this obligation shall be null and void; otherwide to remain in full force and effect.

It is further agreed that the provisions of Rule 13 of the District Court for Summary Judgment against sureties are deemed a condition of this recognizance.

ARON ROSENSWEIG
Principal
2501 E Vernon Ave
Address
NATIONAL AUTOMOBILE INSURANCE COMPANY
By ED GROVES
Attorney-in-Fact

State of California,
County of Los Angeles—ss.

On this 7 day of September, in the year 1943, before me, James A. Mew, a Notary Public in and for said County and States, personally appeared Ed Groves, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile

Insurance Company thereto as principal, and his own name at Attorney-in-fact.

[Seal] JAMES A. MEW
Notary Public in and for said County and State

My Commission Expires August 31, 1943 [34]

Approved as to form
RAY H. KINNISON
Asst. United States Attorney

I hereby certify that I have examined the within bond and that in my opinion the form hereof is correct and surety thereon is qualified.

JOHN W. PRESTON and
SAMUEL MIRMAN
By SAMUEL MIRMAN
Attorney for Defendant and Appellant

The foregoing bond is approved this 8th day of Sept., 1943.

PAUL W. McCORMICK
United States District Judge

[Endorsed]: Filed Sept. 8, 1943. [35]

[Title of District Court and Cause.]

OBLIGATION OF ARON ROSENSWEIG

In this Cause it appearing to the Court that the defendant, Aron Rosensweig was convicted on the 30th day of August, 1943, upon Counts One

and Three of the Information and the judgment of the Court was as follows:

That defendant Aron Rosensweig is guilty of the offenses charged in Counts One and Three of the Information, and that defendant be imprisoned for thirty (30) days in a jail and pay a fine unto the United States of America in the sum of One Thousand $(1,000.00) Dollars on Count One; and it further ordered that the imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years commencing at the expiration of the sentence on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

It further appearing that the defendant Aron Rosensweig [36] has duly filed herein his notice of appeal to the Circuit Court of Appeals, Ninth Circuit, and it further appearing that the said defendant has deposited in the registry of this court the amount of said fine so imposed as aforesaid, to wit: The sum of One Thousand ($1,000.00) Dollars, and

It further appearing by an order of the above court that the execution of the sentence to pay the aforementioned fine was stayed on September 7, 1943 upon the execution by the defendant of a cost bond on appeal with the usual provisions and obligations in the sum of $250.00 and the said defendant having deposited co-incident herewith the

sum of $250.00 in lieu of the cost bond provided above, and said defendant now agrees that the condition of the above obligation represented by the deposit of the $250.00 in cash is such that if said defendant, Aron Rosensweig, shall prosecute his appeal to affect and answer all damages and costs if he failed to make his plea good, then the above obligation is void, else to remain in full force and effect. It is the intention of the said Aron Rosensweig that if the appeal filed as heretofore set out be dismissed or if the sentence resulting therefrom is finally affirmed that the clerk of said District Court be and hereby is authorized to apply said $250.00, or such portion thereof as may be required, towards the payment of the costs on appeal properly chargeable to him by virtue of the aforementioned appeal and to turn over whatever sum is remaining therefrom to said defendant upon the completion and final judgment in the aforementioned appeal.

Dated: September 8, 1943.

ARON ROSENSWEIG
Defendant [37]

State of California
County of Los Angeles—ss.

On this 8th day of September, 1943, before me, Samuel Mirman, a Notary Public in and for said County and State, personally appeared Aron Rosensweig known to me to be the person whose name is subscribed to the within instrument and asckowledged to me that he executed the same.

Witness my official hand and seal.
[Seal] SAMUEL MIRMAN
Notary Public in and for said
County and State

[Endorsed]: Filed Sept. 8, 1943. [38]

[Title of District Court and Cause.]

OBLIGATION OF ABE ROSENSWEIG

In this cause it appearing to the Court that the defendant, Abe Rosensweig, was convicted on the 30th day of August, 1943, upon Counts One and Three of the Information and the judgment of the Court was as follows:

That Defendant Abe Rosensweig is guilty of the offenses charged in Counts One and Three of the Information and defendant is ordered to pay a fine unto the United States of America in the sum of one Thousand ($1,000.00) Dollars on Count One; and it is further ordered that the imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years after the payment of said fine on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

It further appearing that the defendant, Abe Rosensweig, has duly filed herein his notice of appeal to the Circuit Court of [39] Appeals, Ninth Circuit, and it further appearing that the said de-

fendant has deposited in the registry of this court the amount of said fine so imposed as aforesaid, to wit: the sum of One Thousand ($1,000.00) Dollars, and

It further appearing by an order of the above court that the execution of the sentence to pay the aforementioned fine was stayed on September 7, 1943, upon the execution by the defendant of a cost bond on appeal with the usual provisions and obligations in the sum of $250.00 and the said defendant having deposited co-incident herewith the sum of $250.00 in lieu of the cost bond provided above, and said defendant now agrees that the condition of the above obligation represented by the deposit of the $250.00 in cash is such that if said defendant, Abe Rosensweig, shall prosecute his appeal to affect and answer all damages and costs if he failed to make his plea good, then the above obligation is void else to remain in full force and effect. It is the intention of the said Abe Rosensweig that if the appeal filed as heretofore set out be dismissed or if the sentenec resulting therefrom is finally affirmd that the clerk of said District Court be and hereby is authorized to apply said $250.00, or such portion thereof as may be required, towards the payment of the costs on appeal properly chargeable to him by virtue of the aforementioned appeal and to turn over whatever sum is remaining therefrom to said defendant upon the completion and final judgment in the aforementioned appeal.

Dated: September 8, 1943.

ABE ROSENSWEIG
Defendant

State of California
County of Los Angeles—ss.

On this 8th day of September, 1943 before me, Samuel Mirman, a Notary Public in and for said County and State, personally appeared Abe Rosensweig known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed [40] the same.

Witness my official hand and seal.

[Seal] SAMUEL MIRMAN
Notary Public in and for said County and State

[Endorsed]: Filed Sept. 8, 1943. [41]

[Title of District Court and Cause.]

STIPULATION FOR CONSOLIDATION OF APPEALS

It Is Hereby Stipulated by and between plaintiff and the appealing defendants, Aron Rosensweig and Abe Rosensweig, in the above entitled action, that the appeal of the respective filing defendants from the Judgments, and each of them, of the above entitled Court, made and entered in the above entitled cause against them, and each of them, on August 30, 1943, may be presented to the United States Circuit Court of Appeals, in and for the Ninth Circuit, as one appeal, and may be presented on one record, and prepared, presented and considered as the joint record of the filing defendants.

including one assignment of errors and one bill of exceptions.

Dated: September 16th, 1943.

CHARLES H. CARR,
United States Attorney
By CHARLES H. CARR,
Ass't. United States Attorney
for plaintiff
JOHN W. PRESTON & SAMUEL MIRMAN
By JOHN W. PRESTON,
Attorneys for defendants

[Endorsed]: Filed Sept. 16, 1943. [42]

[Title of District Court and Cause.]

ORDER FOR CONSOLIDATION OF APPEALS

It appearing that the plaintiff and appealing defendants in the above entitled action have stipulated that the appealing defendants may present their appeal on one record, and the necessity therefor appearing to this Court;

It Is Hereby Ordered that the defendants, Aron Rosensweig and Abe Rosensweig, may consolidate and present their respective appeals as one appeal, and that said appeals may be presented on one record and prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors and one bill of exceptions.

Dated: September 16th, 1943.

PAUL J. McCORMICK
Judge

[Endorsed]: Filed Sept. 16, 1943. [43]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME TO FILE BILLS OF EXCEPTIONS AND SPECIFICATIONS OF ERRORS

It Is Hereby Stipulated by and between the defendants and the plaintiff in the above entitled action, that the defendants, Aron Rosensweig and Abe Rosensweig, may have up to and including the 2nd day of November, 1943, in which to prepare, serve and file their respective Bills of Exceptions and Assignment of Errors in the above entitled cause.

Dated: This 16th day of September, 1943.

CHARLES H. CARR,
United States Attorney
By CHARLES H. CARR
Ass't. United States Attorney
for plaintiff
JOHN W. PRESTON &
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for defendants

[Endorsed]: Filed Sept. 16, 1943. [44]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE BILLS OF EXCEPTIONS AND SPECIFICATIONS OF ERRORS

It appearing to this Court that the defendants and plaintiff in the above entitled action have stipulated that the defendants, Aron Rosensweig and Abe Rosensweig, may have up to and including November 2, 1943, in which to prepare, serve and file their respective Bills of Exceptions and Assignments of Errors in the above entitled cause, and the necessity appearing therefor to this Court;

It Is Hereby Ordered that the defendants, Aron Rosensweig and Abe Rosensweig, may have, and are hereby granted, up to and including November 2, 1943, in which to prepare, serve and file their respective Bills of Exceptions and Assignments of Errors in the above entitled cause.

Dated: September 16th, 1943.

PAUL J. McCORMICK
Judge

[Endorsed]: Filed Sept. 16, 1943 [45]

[Title of District Court and Cause.]

PRAECIPE

To Edmund L. Smith, Clerk, United States District Court for the Southern District of California, Central Division:

Please prepare a transcript of the record in the above cause to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit and include therein the following:

1. The informations,
2. The demurrer,
3. Order overruling the dumurrer, motion to quash and plea in abatement and exceptions taken, noted and allowed,
4. Pleas of defendants and rulings thereon,
5. Judgment and sentence,
6. Stays of execution on judgment and sentence,
7. Stipulation extending time to file assignments of errors and of exceptions, [46]
8. Order extending time to file assignments of errors and of exceptions,
9. Stipulation for consolidation of appeals,
10. Order for consolidation of appeals,
11. Order on motion to vacate judgment and sentence and/or enter leave to plea of not guilty, exception taken thereto, noted and allowed,
12. Notice of appeal,
13. Bill of exceptions (original),
14. Assignment of errors (original),
15. Copy of this praecipe,

16. All other orders and rulings of the trial court.

17. Probation reports and bonds.

JOHN W. PRESTON
SAMUEL MIRMAN
By: SAMUEL MIRMAN
Counsel for Appellants,
Aaron Rosensweig and
Abraham Rosensweig

Received copy of this praecipe this 4th day of November, 1943.

CHARLES H. CARR
United District Attorney for the Southern District of California, Central Division.
By: JAMES M. CARTER
Assistant U. S. District Attorney

[Endorsed]: Filed Nov. 4, 1943. [47]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 47 inclusive contain full, true and correct copies of: Minute Order entered July 15, 1943; Information; Demurrer; Minute Orders Entered August 2, 1943, August 11, 1943 and

August 30, 1943 respectively; Judgment and Commitment as to defendant Aron Rosensweig; Judgment as to defendant Abe Rosensweig; Minute Order Entered September 2, 1943; Notices of Appeal; Petition for Order Fixing Bail Pending Appeal and for Order Staying Execution of Sentence to pay Fine Pending Bail; Order Admitting Defendants to Bail and Staying Execution upon the Fines Imposed upon Them; Bail Bond on Appeal; Obligations; Stipulation for Consolidation of Appeals; Order for Consolidation of Appeals; Stipulation Extending Time to File Bills of Exceptions and Specifications of Errors; Order Extending Time to File Bills of Exceptions and Specifications of Errors; and Praecipe, which, together with the Original Bill of Exceptions and Assignment of Errors transmitted herewith constitute the Record on Appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to $9.15 which amount has been paid to me by appellants.

Witness my hand and the seal of said District Court this 12 day of November, 1943.

[Seal] EDMUND L. SMITH, Clerk

By THEODORE HOCKE

Deputy Clerk

[Title of District Court and Cause.]

BILL OF EXCEPTIONS BY DEFENDANTS, ARON ROSENSWEIG AND ABE ROSENSWEIG, TO THE PROCEEDINGS AND THE JUDGMENT OF THE COURT HEREIN

Be It Remembered, that on the 15th day of July, 1943, the plaintiff, United States of America, upon order of the Court, and acting by and through Charles H. Carr, United States Attorney, commenced this action in the District Court of the United States for the Southern District (Central Division) of California, by filing therein an information, being cause No. 16108 Criminal.

Count One of said information charges that defendants did knowingly and unlawfully offer for sale, sell and deliver certain beef to one E. E. Surhart for a price in excess of the maximum price fixed in Revised Maximum Price Regulation 169 (7 Fed Reg. 10381) as amended; Counts Two and Five of said information charge that defendants did knowingly and unlawfully fail and neglect to make and preserve complete and accurate records of sales of beef to purchasers [1*] thereof; and Counts Three, Four and Six of said information charge that defendants did knowingly and unlawfully give false invoices covering the sale of meat products to the purchasers thereof.

That thereafter and on the 26th day of July, 1943,

*Page numbering appearing at foot of page of original Bill of Exceptions.

the defendants and each of them was arraigned, and an order was made continuing the proceedings for plea until 9:30 o'clock A. M. on the 28th day of July, 1943.

That thereafter and on the 27th day of July, 1943, the defendant, Abe (Abraham) Rosensweig filed his separate plea in abatement and motion to quash the information herein, which plea and motion is in the words and figures following, to-wit:

(Title of Court and Cause omitted)

"Comes now Abraham Rosensweig, named in the information as Abe Rosensweig, and alleges: that he is not a partner in the firm of Central Packing Company, nor has he any interest in such firm, nor does he do business under the fictitious name of Central Packing Company.

Wherefore, he prays judgment on the information on file herein and that the information may be quashed.

Dated: July 27, 1943.

SAMUEL MIRMAN
Attorney for the defendant
Abraham Rosensweig.

State of California
County of Los Angeles—ss

Abraham Rosensweig, one of the defendants in the information filed in the above entitled action, makes oath and says that the foregoing plea is true in substance and matter of fact and that this defend-

ant has no interest in said Central Packing Company other than that of an ordinary employee.

ABRAHAM ROSENSWEIG

Subscribed and sworn to before me, a notary public, on the [2] 27th day of July, 1943.

SAMUEL MIRMAN
Notary Public in and for said
County and State."

That thereafter and on the 27th day of July, 1943, the defendants herein filed their joint demurrer to the information herein.

That thereafter and on the 28th day of July, 1943, the cause was ordered transferred to Judge Ben Harrison for further proceedings.

That thereafter and on the 28th day of July, 1943, the defendants filed their joint motion to quash the information herein and each and very count thereof, returnable on the 2nd day of August, 1943, which said motion is in the words and figures following, to wit:

(Title of Court and Cause omitted.)

"To Charles H. Carr, Esq., United States Attorney:

Please take notice that upon the information herein and upon all the previous process, pleadings, papers and proceedings had and taken therein an application will be made by the defendants, Aron Rosensweig and Abe Rosensweig, at a stated term of the United States District Court of the Southern District of California, Central Division, appointed to be held at the United States Court House, Temple and Main Streets, Los Angeles, California, at the

court room of the Honorable Ben Harrison, Judge presiding, on the 28th day of July, 1943, at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order quashing the information and each and every count thereof upon the grounds that:

1. That said information and each and every count thereof do not state facts sufficient to constitute an offense against the United States or the laws thereof.

2. That the affidavit supporting the information set [3] forth in counts 1, 2, 3, 4, 5 and 6 is not sufficiently definite so as to inform the defendants as to whether or not affiant was personally present at the time the alleged acts set out in said counts were committed.

3. That the counts setting forth the information, mainly counts 1, 2, 3, 4, 5 and 6, do not sufficiently state whether or not the sales were made by the defendants jointly, or by one of the defendants, or by one of the defendants acting as the agent of the other defendant or of both of them.

4. That the Emergency Price Control Act of 1942, upon which the information is based, is an improper use of the war power by Congress and is also an improper delegation by Congress of its legislative function to an administrative agency.

5. That the Emergency Price Control Act of 1942 and the Revised Maximum Price Regulation #169 and the Revised Maximum Price Regulation #148 deprive defendants of their rights under the fourth amendment and the fifth amendment to the Constitution of the United States of America.

That the defendants by reason of the matter set forth above pray that this information be quashed and that they be not called upon to plead further.

ARON ROSENSWEIG and
ABE ROSENSWEIG
By SAMUEL MIRMAN
Attorney for Defendants''

(Verification)

That thereafter and on the 2nd day of August, 1943, the Court overruled the separate plea in abatement of the defendant Abe Rosensweig, and likewise overruled the defendants' joint motion to quash the information herein and likewise their joint demurrer to said information; to which rulings of the Court the defendants and each of them then and there duly excepted and their exceptions were duly noted and allowed by the Court. [4]

That thereafter and on said 2nd day of August, 1943, the defendants and each of them entered a plea of not guilty to each of the six Counts in the information, and the case was thereupon ordered set for trial by the Court at 10:00 o'clock A. M. on the 13th day of August, 1943.

That thereafter and on the 11th day of August, 1943, at 2:00 o'clock P.M., certain proceedings in this cause were had before the Honorable Ben Harrison, District Judge, in the words and figures following, to wit:

"The Court: The defendants desire to change their plea at this time?

Mr. Preston: If your Honor please, this case has

some peculiarities, and I have considered it carefully. It is a charge of violating price ceilings by a wholesale packer, and there are six counts. After a careful consideration of the case and consultation with the District Attorney, we are willing to enter pleas of guilty to two counts.

The Court: Which counts?

Mr. Preston: Well, they desire 1 and 3, and I don't believe it makes a whole lot of difference.

The Court: Is that satisfactory to the Government?

Mr. Kinnison: That is satisfactory, your Honor.

The Clerk: Mr. Aaron Rosensweig, do you desire to change your plea from not guilty to guilty on counts 1 and 3?

The Defendant Aaron Rosensweig: Yes, sir.

The Clerk: And Mr. Abe Rosensweig the same?

The Defendant Abraham Rosensweig: Yes sir.

Mr. Preston: Your Honor, I presume that this is a proper case for a report to the Court. These are very high class men, and I think the probation officer will find that that is true, and if it is desired by the Court we have no objection. [5]

The Court: I will refer it to the probation officer for a report by Monday, August 30th, at 10:00 o'clock. It is off calendar awaiting authority to dismiss as to the other counts."

That thereafter and on said 11th day of August, 1943, proceedings were had before the Court associating John W. Preston as counsel for the defendants herein.

That thereafter and on the 30th day of August,

1943, certain proceedings were had herein before the Honorable Ben Harrison, District Judge, in the words and figures following, to wit:

"Los Angeles, California,
Monday, August 30, 1943,
10:00 A.M.

The Clerk: United States vs. Aaron Rosensweig and Abe Rosensweig. Your name is Aaron Rosensweig?

Defendant Aaron Rosensweig: Yes, sir.

The Clerk: And your name is Abe Rosensweig?

Defendant Abe Rosensweig: Yes, sir.

Mr. Preston: Your Honor, may I make a few brief remarks in connection with this matter? I want to appeal to the mercy of the Court in this case, and I want to make a few statements of fact in connection with it.

I was in great doubt as to what to do about this case, and I thought it all over, and in view of the conditions surrounding the defendants, and of the war condition, and so on and so forth, I have decided to recommend that they plead to these two counts.

These are very small dealers—about 15 beef a week as against 250 or 1000 in other larger packing places. The act they committed, your Honor, was one, not of moral turpitude, but one of self preservation. They were put out of business on December 1, 1942, because they had no quota, and were kept out of

business until the 1st day of April, 1943, at [6] which time they were given a small quota, and they stayed in business until the 15th day of April, only about two weeks, when they were put out of business again, notwithstanding the great expense they had gone to in getting a crew together, and other expenses, and they continued until the 1st day of July. With no ceiling price on livestock, your Honor, they could not maintain themselves, or pay their expenses, and obey the ceiling price. The ceiling price was fixed at 13 cents for cattle, and when they had to pay 14 cents or 17 cents for cattle they could not live up to that regulation. Mr. Rosensweig, Sr. has been in business for twenty years, without a speck on his name. The young man is only an employee. I trust your Honor will be lenient with them, and I pledge you they will not disobey these rules any more.

The Court: What is the position of the Government?

Mr. Kinnison: The position of the Government is, I believe, more or less like in the report of the Probation Officer. The only matter is, I might somewhat question the size of the defendants' business, for the reason that the information on our file indicates a business greatly in excess of that mentioned by Judge Preston.

Mr. Preston: That is what I am told. Am I correct?

The Defendant: Yes.

Mr. Kinnison: There is evidence in the file of payments made by one of the defendants of $7,000.00

bank deposit in one day. That would lead me to believe their business is somewhat larger than represented. I have no definite information.

Mr. Preston: What I referred to was beef, your Honor. There may be some other livestock which would make it greater.

Mr. Kinnison: I think we should have a true picture before the Court.

The Court: The offense to which they have pleaded is a deliberate, planned offense. It may be true that the regulations of [7] the OPA made it difficult for them to operate, but take the situation of the father; he came to this country, was naturalized, raised his family here, and prospered here. Those opportunities were furnished to him by our form of Government, and are the opportunities which are accorded to everyone. When it came down to the test, when this country is fighting for its life, not only on the battle front, but on the home front, these people who owe so much to this country, have violated our laws.

I have heretofore described this class of offense as secondary sabotage, and that is the way I feel about it now. I haven't any sympathy for these defendants, as I stated before, because their offense was deliberate, and it was motivated by the profit they desired to make at a time when our Government is striving to maintain price levels. I realize these price levels at times work a definite hardship on people, but this Court is not inclined to take these offenses lightly, and, unfortunately, people who violate these price ceilings are not deterred by fines.

It is the judgment of the Court in the case of Aaron Rosensweig, that he be fined in the sum of $1,000.00, and committed to the county jail for 30 days.

It is the judgment of the Court in the case of Abe Rosensweig that he be fined in the sum of $1,000.00 on Count 1. On Count 3 the sentence is suspended for a period of two years on the sole condition that during that period he shall not wilfully violate any of the provisions of the price regulations under the Price Administration, as now constituted, or any law that may be enacted to supersede it.

Mr. Preston: I don't understand.

The Court: The father is sentenced to 30 days in jail.

Mr. Preston: Do you suspend that?

The Court: No, I am not going to suspend it, because it has been my experience that fines do not stop these offenses.

Mr. Preston: May I make a statement to the Court? [8]

The Court: Yes.

Mr. Preston: I took this matter up with the United States Attorney's office, and they took it up with the Probation Officer. It was told to me that the limit set for the first offense in these cases was $250.00, and, so far as these two defendants were concerned, $125.00 on each count would be a sufficient fine. Upon that understanding with the United States Attorney and the Probation Officer, that is what I thought the judgment of the Court would be. I never would have thought of entering a plea of

guilty in a case of this character, where there would be a jail sentence.

Your Honor, I ask that you certainly suspend the sentence at this time, in this case, because I was truthfully taken by surprise by the attitude of the Court, because I understood, even in a second offense, they did not impose a sentence, except a suspended sentence.

Mr. Kinnison: I discussed this matter with Judge Preston. He asked me what sentence the Courts had been imposing. I advised Judge Preston that the only sentence that I had personal knowledge of was by Judge Beaumont, which had been imposed while I was in Court, and in that case a fine of $250.00 was imposed. Judge Preston himself suggested the amount of a $125.00 fine on each count, as to each defendant. There was no commitment made by myself, or anybody in the United States Attorney's office, as to any amount of fine or sentence of any kind that might be imposed in this case.

The Court: Just a minute. Judge Preston knows from his previous experience as United States Attorney that the United States Attorney cannot make any deal that will be binding upon the Court. This is a matter entirely up to the Court on a plea of guilty. That will be the judgment.

Mr. Preston: Mr. Kinnison will admit that he said $125.00 was fair, and I went to the OPA office, and they thought it fair.

The Court: I don't care what the United States Attorney's office or the OPA thought. The defend-

ants are remanded to the custody [9] of the United States Marshal; that is, the father is so remanded. I am willing to give the young man a stay of five days to pay his fine.

Mr. Kinnison: I do not believe the Court stated the count on the sentence of Aaron Rosensweig.

The Court: On Count 1. On Count 3 the sentence will be suspended on the condition I stated, that there will be no willful violation.

That thereafter and on the 30th day of August, 1943, judgments of guilty were entered herein against the defendants, Aron Rosensweig and Abe Rosensweig and each of said defendants was fined One Thousand Dollars, and the defendant Aron Rosensweig was sentenced to thirty day in jail under Count One of the information; and as to each of said defendants sentence was suspended on Count Three for a period of two years and defendants were placed on probation for said period commencing at the expiration of sentence on Count One.

That thereafter and on said 30th day of August, 1943, an order was entered dismissing Counts Two, Four, Five and Six of the information as to each of the defendants herein.

That thereafter and on the 31st day of August, 1943, the defendants herein filed their joint motion for an order vacating the judgments, setting aside sentences, granting defendants the right to withdraw their pleas of guilty and to re-enter their pleas of not guilty, and for a new trial, which motion and the supporting affidavit of John W. Preston filed therewith are in words and figures following, to-wit:

(Title of Court and Cause omitted).

"TO THE PLAINTIFF ABOVE NAMED AND TO THE HONORABLE CHARLES H. CARR, UNITED STATES DISTRICT ATTORNEY, ATTORNEY FOR PLAINTIFF:

You and Each of You Will Please Take Notice that on Thursday, the 2nd day of September, 1943, at the hour of 10:00 o'clock A.M., of said day, or as soon thereafter as counsel can be heard, at the Court Room of the above entitled court, the Honorable Ben Harrison, [10] Judge Presiding, in the Federal Building at Los Angeles, California, the defendants above named will move said Court for an order vacating judgments, setting aside sentences, granting defendants the right to withdraw their pleas of guilty and to re-enter their pleas of not guilty, and for a new trial.

That said motion will be based upon the record, pleadings and files in said cause and particularly on the proceedings had therein on August 30, 1943, and upon the Affidavit of John W. Preston, a copy of which is served herewith.

That said motion will be made upon the ground that the record and affidavit show that the Court was without jurisdiction to impose judgment and sentence on these defendants at this time and that it is a proper case for the common law writ of coram nobis in that the defendants were induced to change their pleas of not guilty and enter their pleas of guilty upon assurances made to them by the office of the United States District Attorney at Los Ange-

les that small fines only would be imposed upon them and that such recommendations would be made to the Court by the probation officer thereof, and that such recommendations were not made and that defendants and each of them have a meritorious defense to said action.

Dated August 31, 1943.

JOHN W. PRESTON and
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for Defendants."

"AFFIDAVIT IN SUPPORT OF MOTION FOR ORDER VACATING JUDGMENT, GRANTING DEFENDANTS THE RIGHT TO WITHDRAW THEIR PLEAS OF GUILTY AND TO RE-ENTER THEIR PLEAS OF NOT GUILTY, AND FOR A NEW TRIAL.

State of California
County of Los Angeles—ss.

John W. Preston, being first duly sworn, deposes and says: That he became associate counsel for the defendants in the above [11] entitled action on or about the 2nd day of August, 1943; that previous to this time Samuel Mirman, Esq., had acted as the sole attorney for said defendants; that immediately following the employment of your affiant he began preparations to try the cause for the defendants, the cause being then set for trial for the 11th day of August, 1943.

That he investigated the proof in the cause, including a statement made by the chief complaining witness in said matter; that he ascertained that in his opinion the proof against the defendants was very weak and defective.

Affiant also investigated the law applicable to the case to a large extent and was of the view that the validity of the Emergency Price Control Act of 1942, as applied to these defendants, was very doubtful and likewise that the regulations invoked by said information were of doubtful validity.

However, notwithstanding the above opinion, your affiant counselled the defendants to the effect that in war time it would not be best to make an attack upon the law and the regulations if it could be avoided and that it was advisable to negotiate with the office of the District Attorney, looking toward a plea of guilty on some of the counts of the information and a dismissal of the remaining counts.

That acting upon this assumption, he contacted Assistant United States Attorney Ray H. Kinnison, in whom he had faith and confidence and who was handling the case for the office of the United States Attorney. Affiant was informed by Mr. Kinnison that he had already stated to affiant's associate, Samuel Mirman, Esq., that the Government would accept a plea of guilty on three of the counts of the information and would, if accepted by defendants, seek a dismissal of the remaining counts. Mr. Kinnison at the same time volunteered to state that in his opinion a plea to two counts would suffice if

agreeable to the legal staff of the Office of Price Administration in Los Angeles. [12]

Affiant made inquiry of Mr. Kinnison as to the nature of the judgments that had been imposed for offenses of this character and was informed that $250.00 was the highest penalty that had been imposed and that no imprisonment sentences had been given by any Judge of the Federal Court. Mr. Kinnison recommended that affiant see the legal staff of the Office of Price Administration and said that anything they would recommend would be satisfactory to him as the representative of the Government.

That, accordingly, affiant called upon the Office of Price Administration and talked at length with Mr. Roger E. Johnson, who informed affiant that a plea of guilty on two counts would be satisfactory; that the plea should be upon count one and upon any other one of the remaining counts.

After talking with Mr. Johnson, your affiant then recontacted Mr. Kinnison and informed him of the statements made by Mr. Johnson. Affiant then asked Mr. Kinnison what he thought of a fine of $125.00 on each count, making a total of $500.00, with no imprisonment, if the defendants should enter pleas of guilty to the two counts. Mr. Kinnison responded that he thought that was just about the correct judgment that should be entered.

Affiant then asked Mr. Kinnison if he would recommend in open court such a disposition of the case. He responded that he did not feel free to mention figures to the Court and would not do so unless the

Court requested a recommendation from him, but he volunteered then and there to say that he could talk about the disposition of the cause and the amount of the fines to the probation officer and that the probation officer, in turn, was privileged to make, and would make, recommendations, including the amount of the fines, to the Court. He likewise promised to talk to the probation officer and ascertain from him if he would make a recommendation in the manner and amounts above set forth.

Affiant waited a day or two and again asked Mr. Kinnison if [13] he had talked to the probation officer about this recommendation. Mr. Kinnison replied that he had and that the probation officer said that he would make such recommendations to the Court with the sole proviso that the records of the defendants should be free from prior convictions.

Affiant, knowing that no prior convictions had been had, related these facts substantially as stated to defendants and upon this assurance they consented, upon affiant's recommendation, to withdraw their pleas of not guilty and to enter pleas of guilty to counts one and three of the information.

This change of plea took place on the 9th day of August, 1943. In open court at the time of the change of plea, affiant explained to the Court that he had taken the matter of settlement of this case up with the District Attorney and an agreement had been reached to plead guilty to counts one and three of the information and that the District Attorney was to recommend a dismissal of the remaining counts to

the office of the Attorney General at Washington, D. C.

Affiant queried Mr. Kinnison two or three times between the date of the change of plea and the date of judgment and was assured that he had heard nothing derogatory to the understanding concerning recommendations as to judgments in the case.

Finally, and on the morning of the day for judgment, to wit; August 30, 1943, affiant again queried Mr. Kinnison and was told by him again that everything was all right except that the report of the probation officer contained the word "substantial" with reference to the judgment. Affiant was not informed further about the matter, but believed that the word "substantial" was intended only to mean a substantial fine.

At the time of judgment on August 30, 1943, your affiant offered to explain fully the arrangement between the District Attorney's office in connection with this matter, but the Court declined to permit him to make such explanation and said that he was not [14] interested in it. Had your affiant been allowed to do so, he would have explained fully these facts and would have asked the Court to allow the defendants to withdraw their pleas of guilty and to re-enter their pleas of not guilty in the action. Affiant would not have recommended a change of plea had he not been assured that the recommendations described above would be made to the Court by the probation officer; that affiant feels that a great injustice will be done these defendants if this judg-

ment is not vacated and the defendants granted an opportunity to re-enter their pleas of not guilty and thereby granted a new trial herein.

That affiant verily believes that the defendants have a meritorious defense in that the Emergency Price Control Act of 1942 and the regulations thereunder may be held void by the Supreme Court of the United States. Likewise, affiant believes that the proof offered by the United States will be found insufficient to convict the defendants.

JOHN W. PRESTON

(Verification)

That thereafter and on the 1st day of September, 1943, the defendants and each of them filed an affidavit in support of their motion for an order vacating judgment, setting aside sentences, granting them right to withdraw pleas of guilty and re-enter pleas of not guilty and for a new trial. The affidavit of defendant, Aron Rosensweig, is in the words and figures following, to wit:

(Title of Court and Cause omitted)

"State of California
County of Los Angeles—ss.

Aron Rosensweig, being first duly sworn, deposes and says: That he is one of the defendants in the above entitled action; That on the 9th day of August, 1943, he entered his plea of not guilty to all counts in said information;

That at all times prior to August 2, 1943, Samuel Mirman, Esq. [15] acted as his sole attorney in said case; that on August 2, 1943, he associated John W.

Preston, Esq., as his counsel of record for the purpose of preparing his case for trial and trying said case.

That he had frequent conferences with John W. Preston, who investigated not only the evidence of the defense, but certain evidence of the prosecution and was informed by said John W. Preston that the evidence of the Government was weak and defective.

That John W. Preston also stated that there was grave doubt as to the validity of the law and of the regulations under it, set forth as the basis of the information in this case. But, said John W. Preston, notwithstanding the above, advised affiant that owing to the war conditions prevailing in the country, that it was best not to attack the validity of said law and regulations, but to secure permission to enter a plea of guilty on two or three of the counts of said information and pay a small fine thereon and have the case ended.

That he finally agreed that John W. Preston should negotiate with the office of the District Attorney in connection with such a settlement. That John W. Preston reported to him that the District Attorney had recommended to the probation officer and the probation officer would recommend to the Court that affiant be fined $125.00 on two counts of said information and that no other punishment would be imposed.

That in changing his plea of not guilty to all counts to guilty on counts one and three, on the 9th day of August, 1943, he was influenced solely by the abiding belief and conviction that said recommendation of

said probation officer would be made as above set forth and that said judgment of said Court would be in accordance with such recommendation.

That had he not believed the above and foregoing to be correct, he would not have thought of pleading guilty to counts one and three, or to any other count or counts. That at all times men- [16] tioned herein this affiant has been informed by his counsel, after a fair statement of the facts to them, that good ground existed for the belief that the Supreme Court of the United States might declare said statute and said regulations under it invalid and void.

Affiant therefore asks the privilege of withdrawing his plea of guilty to counts one and three of said information and to that end the judgment in the case heretofore rendered be vacated and that he be allowed to re-enter his plea of not guilty to each count of said information and that he have a new trial thereon.

ARON ROSENSWEIG"

(Verification)

The affidavit of defendant, Abe Rosensweig, is in all material respects identical with the affidavit of defendant, Aron Rosensweig, in its factual statements, and is therefore not copied in Bill of Exceptions.

That thereafter and on the 2nd day of September, 1943, the affidavits of Roger Johnson and Ray H. Kinnison, in opposition to motion to vacate judgments, were filed herein and are in the words and figures following, to-wit:

(Title of Court and Cause omitted)

"AFFIDAVIT OF ROGER JOHNSON IN OPPOSITION TO MOTION TO VACATE JUDGMENT

United States of America
Southern District of California—ss.

Roger Johnson, being first duly sworn deposes and says:—

That affiant is an enforcement attorney in the Los Angeles District office of the Office of Price Administration; that as such attorney he represents the Office of Price Administration in criminal matters in the above-entitled court.

That on August 2, 1943 after defendants had entered pleas of "Not Guilty" the question of defendants changing their pleas to [17] "Guilty" was discussed by Samuel Mirman, Esq., defendants' counsel, with Ray Kinnison, Assistant United States Attorney, and your affiant. Mr. Mirman indicated that, if agreeable to the United States Attorney's office, defendants would be willing to plead guilty to two Counts of the information if the remaining Counts would be dismissed. Mr. Kinnison stated that such a plea would be acceptable to his office *it if* was acceptable to the O.P.A. Your affiant stated that it undoubtedly would be agreeable, but that affiant would want to check with his office before making a definite commitment. Mr. Mirman further stated that before he would permit his clients to change their pleas as indicated, he would want to obtain the approval of the attorney who he was going to associate with him in this

case. Mr. Mirman stated it would be necessary for him to associate counsel with him because he was going to be engaged for three weeks in the trial of a criminal case in the Superior Court of the State of California.

That on or about August 9, 1943, John W. Preston called at the Los Angeles District office of the O. P. A. at 1033 South Broadway, to keep an appointment he had made with affiant. He stated to affiant that he had discussed with Mr. Kinnison of the United States Attorney's office, the matter of defendants' pleading guilty to two Counts of the information and that Mr. Kinnison had stated that such a plea was acceptable if agreeable with the O. P. A. Mr. Preston wanted to know if our office would have any objection to such a plea. Your affiant stated that the Office of Price Administration had no objection and that affiant would so inform Mr. Kinnison. Your affiant did state that the O. P. A. would want the defendants to plead guilty to Count 1 of the information. Mr. Preston asked affiant if any defendants in these meat cases had been sentenced to jail, and affiant told him that none had been sent to jail, that one or two had been, besides being fined, placed on probation for two or three years.

About two days later Mr. Preston called affiant on the 'phone and [18] wanted affiant to assure him that the O. P. A. would not subsequently prosecute the defendants herein for any other violations of the meat regulations that had been committed by the defendants prior to the filing of the information herein. Affiant told him that, although the

Counts set forth in the information did not cover all the violations that our investigation had disclosed, our office would not subsequently prosecute the defendants for any other violations that they had committed prior to the filing of the information after they pleaded guilty to the information then on file.

ROGER JOHNSON"

(Verification)

"AFFIDAVIT OF RAY H. KINNISON IN OPPOSITION TO MOTION TO VACATE JUDGMENT

United States of America
Southern District of California—ss.

Ray H. Kinnison, being first duly sworn deposes and says:—

That affiant is an Assistant United States Attorney at Los Angeles, California. That on or about the 28th day of July, 1943, the above-entitled matter was assigned to affiant for disposition.

On August 2nd, 1943, demurrer and motion to quash filed by the defendants came on for hearing. At that time the court overruled said demurrer and motion, the defendants entered their plea of "Not Guilty" to all counts of the information, and the case was set for trial on August 13, 1943. Immediately thereafter the court recessed, and while still in the courtroom counsel for defendants, Mr. Samuel Mirman, Esq., approached your affiant and the question of the defendants entering a plea of

guilty was discussed. Mr. Roger Johnson, counsel for the Office of Price Administration was present in said court and took part in said discussion. It was then understood that the defendants would change their plea and enter a plea [19] of "Guilty" to two Counts of the information and that the United States Attorney would then move for dismissal of the remaining counts of the indictment. Mr. Mirman then stated that due to the fact that he would be engaged for approximately three weeks in the trial of a criminal case in the Superior Court of the State of California, it would be necessary for him to associate counsel to handle the above-entitled matter, and that before such steps were taken he desired that such counsel which should thereafter be associated in this matter should approve of this procedure.

Thereafter, on or about August 6th, 1943, affiant received a telephone call from John W. Preston who advised affiant that he had been associated as counsel for the defendants, and the question of the defendants changing their plea was briefly discussed. Thereafter, on or about the 7th day of August, 1943, Mr. Preston called at affiant's office and the following discussion took place:

Mr. Preston stated that at one time he had been United States Attorney at San Francisco, and for a number of years had been an Associate Justice of the California Supreme Court; that he questioned the validity of the Emergency Price Control Act and the Rules and Regulations passed thereunder, but that he believed that in time of war an

attack thereon should not be made (notwithstanding that the validity of said act and rules and regulations had already been made in this case by demurrer and motion to quash). After further discussion it was understood that the defendants would change their plea to "Guilty" upon two counts of the information and the balance of the counts would be dismissed after judgment had been imposed. The question of sentence was then discussed, and Mr. Preston asked what sentences had been imposed in similar cases. Your affiant stated that in the only case of which he had personal knowledge a fine of Two Hundred Fifty ($250.00) Dollars had been imposed by Judge Beaumont, and that to the best of his knowledge no imprisonment sentences had been imposed by any Judge of the Federal Court in Los [20] Angeles. Mr. Preston then stated that before definitely deciding upon the procedure to follow he would like to talk to the officials of the Office of Price Administration. Your affiant advised Mr. Preston that he had no objection to this procedure.

Thereafter, on the morning of August 10, 1943, Mr. Preston again called at your affiant's office and stated that he had talked to Mr. Johnson at the Office of Price Administration, and had suggested to Mr. Johnson that a total fine of Five Hundred ($500.00) Dollars would be proper in this case, and asked if your affiant would recommend such amount to the Court. Your affiant stated to Mr. Preston that it was the policy of the United States Attorney's office not to make any recommendation to the

Court as to the amount or nature of the sentence to be imposed and would not make any recommendation unless so requested by the Court. Mr. Preston then asked what recommendations the Probation Officer could or might make, and if that office would recommend a specific amount as to a fine. Your affiant advised Mr. Preston that it was the custom of that office not to recommend a specific amount as to a fine. Mr. Preston then requested your affiant to discuss the matter with the probation office and advise him thereof.

Thereafter, on the same day, your affiant talked to Mr. Meader, of the probation department, giving him the facts of the case and stating that Mr. Preston had suggested the amount of Five Hundred ($500.00) Dollars as being a reasonable amount to fine the defendants. Mr. Meader stated that upon the facts stated, if the defendants had no prior record, "and all other things being equal," the probation office would undoubtedly recommend a "moderate fine." Thereafter, on the same day, your affiant called Mr. Preston on the telephone and repeated to him the statements made by Mr. Meador. Arrangements were then made to advance the case upon the calendar for defendants to change their plea.

On the morning of August 30, 1943, at approximately 9:30 A. M., [21] your affiant received a telephone call from Mr. Preston requesting information as to the report of the Probation Office. At that time your affiant read to Mr. Preston the last two

paragraphs of the report of the Probation Officer, which reads as follows:

"SUMMARY:

"Investigation has shown that Aron Rosensweig and Abe Rosensweig were violating price ceiling according to a well-planned scheme. Their invoices of maximum prices and checks received from buyers show similar amounts. However, they accepted further cash payment on the side. OPA investigation indicates that thousands of dollars over-charge was probably made by this method.

"RECOMMENDATION:

"Because of the clear past record of these defendants, penitentiary sentence is not recommended. It is recommended that they be given a heavy fine and placed on probation."

No comment thereon was made by Mr. Preston.

Your affiant states that at no time did he make any statement to Mr. Preston or to anyone else to the effect that the Probation Officer would recommend the fine suggested by Mr. Preston. Affiant further stated to Mr. Preston that while the Probation Officer occasionally asks for suggestions from the United States Attorney's office as to a sentence to be recommended in a particular case, that office is in no way bound by such suggestion, and then reminded Mr. Preston that from his own experience as United States Attorney he knew the Court is

not bound to follow the recommendations of the Probation Officer.

Further affiant saith not.

RAY H. KINNISON."

(Verification) [22]

That thereafter and on said 2nd day of September, 1943, certain proceedings were had herein before the Honorable Ben Harrison, District Judge, in the words and figures following, to-wit:

(Title of Court and Cause omitted.)

"The Clerk: United States against Aaron Rosensweig and Abraham Rosensweig.

Mr. Preston: Ready.

Mr. Carr: The Government is ready, your Honor.

The Court: May I read the counter affidavit first, before you proceed?

Mr. Preston: Yes, your Honor.

May it please the Court, I have just perused, at the same time the Court was perusing it, the affidavit of Mr. Kinnison, and, if the Court will allow me, I would like to make just one or two contradictions to that, under oath. I would like to do so now, or file a counter affidavit later.

The Court: There will be no objection to that, I suppose?

Mr. Carr: The Government has no objection, your Honor.

Mr. Preston: May I be sworn now?

The Court: Yes.

JOHN W. PRESTON,

being first duly sworn, testified as follows:

The Court: May I suggest to counsel that he ought to take the witness stand?

Mr. Preston: Yes, your Honor.

The Court: You may make your statement in narrative form, rather than asking yourself the questions and giving the answers as far as the Court is concerned.

The Witness: Thank you. I have read the affidavit of Ray H. Kinnison, just filed in this Court, wherein an [23] extract is purportedly given of the Probation Officer's report in the pending case, with the statement that the report was read to me over the telephone. This statement is absolutely untrue. The only thing that was said between me and Mr. Kinnison upon that subject was that I asked him if there was anything in the report derogatory to our previous understanding that the Probation Officer would recommend to the Court a fine of not to exceed $125.00 on each count, and he said the report was perfectly O. K. except for one word, that it had the word "substantial" in it, and there was no extract from that report read to me at all. Counsel is entirely mistaken about that, and that is corroborated by my statement, the fact that I said to the Court in chambers when I presented these papers, that the word "substantial" was quoted to me as being in the report by Mr. Kinnison. Isn't that true, Mr. Kinnison?

(Testimony of John W. Preston.)

The Court: No; you can't ask him. You are testifying now under oath.

The Witness: I am through.

Cross Examination

By Mr. Carr:

Q. Judge Preston, you did have a conversation at that time on the telephone with Mr. Kinnison?

A. Before going to Court on the morning of the 30th I asked him if the report was in accord with what I had understood to be its contents.

Q. You did at that time discuss the probation report?

A. Well, I asked him about the report, and he told me that the report was all right, except the one word——

The Court: Can't you answer the question?

A. Yes, I have answered it. What is the question again? [24]

Q. By Mr. Carr: Did you at that time discuss the probation report with Mr. Kennison?

A. To the extent mentioned only.

Q. Did he state what the probation report contained?

A. No, sir. He said that the word "substantial" was in the report, which was the only thing in it different from what our understanding was.

Q. Did you discuss or reiterate your understanding that the——

A. No, I didn't, but I did talk to him previously several times, two or three times, between the time

(Testimony of John W. Preston.)

of our understanding and the time the plea was entered and at the time in question now.

The Court: What was your understanding?

A. The understanding was as set forth in the affidavit, and I will repeat it, if you want me to.

Q. By Mr. Carr: Yes.

A. As soon as I was employed in this case, Mr. Carr, I looked into the law some; I looked into the proof some, I had the complaining witness queried, and I made up my mind that it was a very doubtful case.

Q. I mean, what was your understanding, if I may interrupt, with Mr. Kinnison?

A. That is what I am leading to. After talking the matter over and investigating it, I called on Mr. Kinnison, over the telephone, I think, first, and I don't remember the date—probably about the 5th or 6th of August—and he told me that he had made a proposition to Mr. Mirman, my associate here, whereby a plea of guilty to two counts might be entered, and the remaining counts dismissed, but on thinking it over he thought that would be satisfactory to him, but he didn't want to take that stand without the con- [25] sent of the legal staff of the OPA, and anything they agreed to would be all right. And I asked him what sentences had been meted out in similar cases, and he said the highest one he knew of was a fine levied by Judge Beaumont of $250.00. I then, acting on his offer, went to see Mr. Johnson, of the OPA staff, and talked at length with him about it, and he told me

(Testimony of John W. Preston.)

that a plea on two counts would be satisfactory to him. And I told him I was going to report that to Mr. Kinnison. And I asked him which counts, and he said No. 1 and I asked him which after that, and he said any other one, that it didn't make any difference to them. I then relayed this information to Mr. Kinniston, and asked him what he thought of $125.00 as the maximum fine on each count, and he said, "That is, in my opinion, just right."

Q. He did state to you that it was his opinion?

A. He did, yes, in his judgment, it was just right. And I then asked him if he would make such a recommendation to the Court, and he said, "You know Judge Harrison. You can't make recommendations in his Court, and I can't do it unless he asks me." I said to him, "It is sometimes done, even in Judge Harrison's Court", and he said, "I can do this", he says, "I can talk to the Probation Officer, and," he says, "he can talk to the Judge and make recommendations." I said, "Well, you can talk with the Probation Officer and see if he will make this recommendation", and he said he would. And he either called me or I called him, and I asked him what the Probation Officer said, and he said the Probation Officer was agreeable to it, and he would do it unless, on investigation, he found that there was a previous conviction against the defendants. And I told him I didn't fear that at all. And that was the understanding.

The Court: That was what the substance of the conver- [26] sation was?

(Testimony of John W. Preston.)

A. Yes; that is what the understanding was.

Q. By Mr. Carr: Then there was no understanding other than what you have related as between you and Mr. Kinnison?

A. No. I think that is all. He simply reported back that it was all right with the Probation Officer. Then I contacted Mr. Kinnison two or three times after that, to see if there was any change of attitude of the Probation Officer, and he said no, until the morning of the trial, and that is when he said that the word "substantial" was in the report. I never saw this report, nor do I remember any reading of the report.

Q. Mr. Kinnison didn't tell you that he would see to it that the Probation Officer would make a specific recommendation to the court, did he.

A. That is the way I understood it, absolutely. He said he would talk to the Probation Officer, and he reported back to me that the Probation Officer would make the recommendation. That is absolutely correct.

The Court: You made the statement that your recollection of this matter is that the report was not read to you?

A. I know it wasn't read to me.

Q. By Mr. Carr: Could you be mistaken, that you thought he was talking, but that he was actually reading from the report?

A. There was no reading at all, nothing read whatever. He told me the report was all right, meaning, as I took it, that it was according to our

(Testimony of John W. Preston.)

understanding, except that the word "substantial" was there.

Q. Now, Judge, with those facts in mind, you advised your clients, did you not, to plead guilty in this case? [27]

A. I did. I consulted with them, and I said, "You have got a 50-50 chance to beat this case, but," I said, "the OPA has put the law under attack, but I think they will straighten this out, and I don't believe we will make a fight on the law or regulations". And I said, "I have talked it over with the United States Attorney's office and the Probation Officer has agreed to recommend a fine of not to exceed $125.00 on each count, and I recommend that you change your plea on that ground."

Q. Didn't you just say that Mr. Kinnison said he could not recommend the fine?

A. He said just what I said, exactly.

The Court: You also advised your clients that sentence would be imposed, and that that was a matter that was up to the Court?

A. I told them that the Court would not have to live up to it, but I knew then, as I know now, that the defendants would have the right to change their pleas, if this was not lived up to. I had been through that, and I knew that.

Mr. Carr: May I have that last answer read, Mr. Reporter?

(Last answer read by the Reporter.)

The Witness: Of course, I couldn't bind the Court and wouldn't try to bind the Court.

(Testimony of John W. Preston.)

The Court: What I am getting at, Judge, is that you reported your discussion with the United States Attorney's office and made the recommendation, and you most certainly advised your clients that you couldn't guarantee any such result?

A. No, I couldn't guarantee the result.

The Court: I mean, you didn't so advise them?

[28]

A. I did not. I told them I thought the recommendation of the Probation Officer would be accepted, in all likelihood, in toto, but that, of course, nothing could be guaranteed about that.

The Court: Didn't you advise your clients, Judge, that any proposed arrangement with the United States Attorney would be subject to the will of the Court and the conscience of the Court?

A. I think that was understood, so that there was no use commenting on that subject. There is a liason between the United States Attorney and the Federal Court, and the Defendants have a right to rely on assurances made by the United States Attorney's office.

Q. Mr. Carr: You did so advise your clients, however, that it would be subject to the conscience of the Court?

A. Well, that may have been, in substance, what I told them, that I thought the law hadn't been passed on, and it was doubtful whether it was valid or not, and that no Court would impose any imprisonment sentences under conditions like that, in my opinion, especially when a man couldn't pos-

(Testimony of John W. Preston.)

sibly live up to those regulations and continue in business.

Q. Just one other fact for the record. You were a former Supreme Court Justice of the State of California? A. Yes, sir.

Q. And you were formerly United States Attorney, during war time, during the last war?

A. Yes, I was. I handled this same kind of cases then.

Q. And you have been practicing law for how many years?

A. I was regularly admitted April 6, 1897. [29]

Q. And at the present time you are still in good health?

A. I am still in good health, and I am friendly to the Courts, and friendly to you and the whole office. I just don't want to be put in an awkward position here and have these men suffer due to what I said in their behalf, in representing them.

Q. Did you advise your client to state in his affidavit that he was innocent?

A. He didn't state that he hadn't made an infraction of the regulations. It is there only that he has a good defense, and I think he has got it myself.

Mr. Carr: That is all, sir.

Mr. Preston: Now, may it please the Court, I move your Honor, with the greatest respect for the institution your Honor presides over, for an order vacating these judgments entered on the 30th day of August, 1943, and permitting these defendants to

withdraw their pleas of guilty to Counts 1 and 3, and re-enter their pleas of not guilty to each and every count of the information, and that they be given what would be, in effect, a new trial. I base that motion, if your Honor, please, upon two grounds:

1. Because it is a motion in term time, which the Court can entertain; and

2. On the second ground that it is a motion that serves the purpose of the common law writ of coram nobis.

The substance of these affidavits and counter affidavits has been read, undoubtedly, and reviewed again here this morning, and it is not necessary for me to further relate what the facts of this case are. I want to state your Honor that I have been sworn here this morning, and I [30] have had a great deal of experience with the Federal Courts, and I have wielded the strong arm of the Government for years. And I have had many seemingly bitter experiences in Court, but I have never had one that wasn't ironed out properly, and which didn't increase my respect for the Courts—and, I hope, their respect for me—and my respect for the institutions of our country.

This case is one in which the United States Attorney should be willing to consent to the withdrawal of the pleas or a modification of the judgment of the Court in this matter. There is surrounding the United States Attorney's office and its relation to the Court a sacredness that should not be even open to suspicion or question at any time.

It is far better that a guilty man escape than that disrespect or criticism or suspicion run against the Court and its functions.

Now, Mr. Kinnison and I thought that this Probation Officer would recommend this fine of $125.00, and that that recommendation would be substantially respected by the Court. I told the defendants that, and they relied on it. Their affidavits are not contradicted, that they relied on that solely, solely on my advice, and I did it for the purpose already explained to your Honor, that is, largely to prevent an attack upon the OPA law and regulations in this critical time. And I don't believe now that it would be fair or just to these defendants, who have splendid reputations, who are gentlemen of high standing in their community, to imprison them on a first offense, which occurred recently, back in April or May of this year, where *there* hadn't been an adjudication of the validity of the Act or the validity of the regulation.

This very regulation was before the Supreme Court of the United States on the 10th day of May, in the case of Lockerty [31] vs. Phillips, an exactly parallel case, except that this was a big institution. They were meat dealers. They bought meat from the packers and sold it to the retail trade, and they asked for an injunction against the OPA on the ground that they could not live up to this regulation and stay in business. And they made the very point that we would make now, if this were a case before the Court now, that the Administrator had failed to fix or regulate the price of livestock.

"The conditions in the industry—including the quantity of meat available to packers for distribution to wholesalers, the packers' expectation of profit, and the effect of these conditions upon the prices of meat sold by packers to wholesalers—are such that appellants are and will be unable to obtain a supply of meat from packers which they can resell to retail dealers within the prices fixed by Regulation No. 169."

The Court denied this injunction upon the ground that equity jurisdiction had been put in the Emergency Court, but confined its statement as to equitable remedies, which were the remedies sought here, to-wit, an injunction against the enforcement of the regulation, to the following, in the concluding part of this opinion:

"Since appellants seek only an injunction which the District Court is without authority to give, their bill of complaint was rightly dismissed. We have no occasion to determine now whether, or to what extent, appellants may challenge the constitutionality of the Act or the Regulation in courts other than the Emergency Court, either by way of a defense to a criminal prosecution or in a civil suit brought for some other purpose than to restrain enforcement of the Act or Regulation issued [32] under it."

The Court reserved that power, which we would raise here, so I thought, and I think I had the

right to think, that no Court in this doubtful state of the law, against a first offender, would assess a prison sentence. I never even thought the Court would do it. I was willing, of course, on the matter of the fine, that the Court's judgment not be questioned too much, but I thought $125.00 was enough. It amounted to $250.00 for each defendant. And they are of the same family. They are small operators. On the matter of whether they were doing it for profit, they were doing it to live. They couldn't have maintained their organization or their customers or their business if they had lived up to this Regulation. And here is what a member of this very OPA had to say on this very subject. I am reading from the Saturday Evening Post. He said:

> "Only an economist could expect the meat industry sells steaks at prices based on thirteen-cent livestock when the live animal costs fifteen cents or more, and be surpised to find that such a policy resulted in a nation-wide black market. Only economists would insistently keep such a policy in force when the results were so obvious and so tragic."

I went through the prohibition period, your Honor, and you cannot enforce a law, in my opinion, unless there is public sentiment behind it, with force in it. And public sentiment was not supportting this Regulation. This very man resigns from the office and comes out and writes an article for the Saturday Evening Post, to show why the OPA had failed. The nation-wide existence of black

markets is, of course, known inferentially, if not actually, to all of us. [33]

The law in this case is clear that it is within the Court's power to do this during term time, or because of the writ of coram nobis. The law is clear.

I wrote the opinion in People vs. Schwarz in 201 Cal., which has been reaffirmed in two or three cases since that time. My very language is quoted in it, and in that opinion I state for the Court that you had better let a guilty person go than to have the District Attorney's office put in such a position that people would be afraid to deal openly and honestly and fairly with them, for fear of what might happen thereafter.

The Court: The facts in that case were entirely different than they are in this.

Mr. Preston: They were somewhat different, your Honor.

The Court: That was a case where a party had been misled into making a statement, on the promise that he would be granted immunity.

Mr. Preston: Or else not be fined more than $250.00.

The Court: In this case I was rather interested in your language:

"The case of People vs. Miller, 114 Cal., 10, 16, it is said, supports the action of the trial court, but it is not in the same category with the case before us are to the facts thereof. There the defendant was led by the advice of his counsel to believe that he would get less punishment if he changed his plea to guilty than he would receive

if he stood trial and was convicted. In this hope, however, he was disappointed. The Court rightly held that with full knowledge of the consequences which might follow he should not be permitted to speculate upon the action of the Court. But even in that case the Court said: 'The law seeks no unfair advantage over a defendant, but is watchful to see [34] that the proceedings under which his life or liberty is at stake shall be fairly and impartially conducted. It holds in contemplation his natural distress, and is considered in viewing the motives which may influence him to take one or another course. Therefore it will permit a plea of guilty to be withdrawn if it fairly appears that defendant was in ignorance of his rights and of the consequences of his act, or was duly or improperly influenced either by hope or fear in the making of it'."

Mr. Preston: The case of People vs. Campos, 3 Cal. 2d., Page 15, is a case where the District Attorney told the defendant that he thought that if he would plead guilty he would get a life sentence instead of a sentence of death, and the Court gave him a sentence of death.

In the case of People vs. Savin, which is a very much weaker case than this one, the District Attorney told the defendant he thought he would be sent to the road gang, and the Deputy District Attorney told him the same thing, and told him he thought it would be for about nine months, and the Court didn't send him to the road gang. And the Court let him change his plea and plead not guilty.

The Court: What is that citation?

Mr. Preston: That is the case of People vs. Savin, 37 Cal. App., Page 105.

I don't know what else to say, if your Honor please. I never was more shocked in my life than at this occurrence, as I have suggested here, and I have been at the bar and a trial lawyer since 1897. I have tried to maintain my respect for the Courts and their respect for me. And I am at an awful disadvantage to see these men sent to jail under these circumstances, your Honor, and I wouldn't have thought of it. They had better stand trial and be convicted than [35] to do this. And with the law in the uncertain state it is in, I wouldn't have thought of tendering a plea of guilty in their behalf, under these circumstances, your Honor.

I just say that your Honor should not permit this judgment to stand under these circumstances. Under the writ of coram nobis you can modify the judgment, so that the rights of these defendants will be respected, as well as having the law vindicated.

I ask your Honor for the most careful consideration of the motion.

The Court: What is the position of the United States Attorney?

Mr. Carr: If the Court please, where there is a question of doubt I would suggest, in the interest of justice, that a defendant be given even a second opportunity. But, first, may I preface my remarks by saying, your Honor, that in my opinion the Court has no power to set this judgment aside un-

less, on the theory of the writ which Judge Preston has mentioned, it has the power to——

The Court: Well, let us not argue about the law, because I am going to pass upon it in a factual manner. I am going to assume that if the Court has been imposed on and I have been a party to an unfair situation, I will try to correct it.

Mr. Carr: I would want your Honor to correct it within the Court's sound discretion, but I think there are limitations with respect to the writ.

The Court: I can always modify the judgment, and, after all, that is what Judge Preston really wants.

Mr. Carr: That is exactly what he wants, and that is the whole trouble. They got 30 days, and, having chiseled on the OPA, now the two defendants want to chisel on the [36] sentence. Judge Preston has not stated in his affidavit nor in his testimony any different understanding from what possibly many lawyers get every day in their career, and that is that the United States Attorney or the District Attorney, as the case may be, says, "We will accept a plea on two counts, and the Court in these cases is doing such and such", and that is only a statement of opinion, and if Mr. Kinnison said that he would recommend probation, that statement may have been inadvisedly made. We do not recommend to the Probation Officers. We do consult with them at times. And the Court is not bound by the judgment of a Probation Officer. So counsel comes into court and testifies and shows that he went to his client and advised him to plead guity, and under the circumstances as he related them

on the witness stand the client came into court and was asked if he was guilty, and he pleaded guilty, and he got a sentence that he didn't like. The only thing I have in mind is that I don't want to set up, if I can help it, a procedure whereby defendants take pleas, and then, when they don't get what they think they ought to have, they come in and ask the Court to set aside the judgment. I am going to submit that there is upon the United States Attorney a strict and solemn duty to see that justice is done. If this Court, in its sound discretion, feels that anything has obtained in this procedure which has brought about injustice to these defendants, I would be the first to ask to set *aside* it aside, and we will give them a trial, you may rest assured. But if the Court feels, from the statements in the affidavit and from the testimony given, that this is nothing more than an effort on the part of these defendants to chisel down their sentences, then I earnestly suggest that the Court deny the motion. [37]

I have been with the Government some several years myself, and I abhor any Government man who will take advantage of a defendant under any circumstances, and I have tried to adhere to that rule. Perhaps sometimes there are misunderstandings between lawyers, but Judge Preston, who has served all of these years as counsel and as United States Attorney also—there are three of us in this courtroom who have served as United States Attorney—knows that when he represents a client the duty is bounden upon him to advise that client that when he pleads guilty, no man can bind the

Court, and that the Court will do as it pleases. So it behooved Judge Preston, and from his testimony I glean that he did, to advise his clients of that possibility, and, knowing those facts full well, he came into this Court and pleaded guilty, and now he stands here and says, "I have been mistreated."

I submit the matter to your Honor. I must uphold the men in my office. Mr. Kinnison is a new man in this office, but I have absolute confidence in him. I don't believe for a moment that he intended to do or say anything that was not exactly true. But I respectfully say that, as between these two gentlemen, one is mistaken; which I do not know.

The Court: Where is there any serious conflict in their statements, except as to the report of the Probation Officer?

Mr. Carr: There is no conflict, except in that one statement, and I will say this to the Court, that perhaps even Judge Preston could be mistaken. We are willing to submit it to the sound discretion of this Court, and if the Court feels that there is the slightest indication that we have misled the defendants, we are perfectly satisfied to have the Court do as it sees fit. [38]

Mr. Preston. I want to resent the statement that we are here trying to chisel down this judgment because we are surprised by it. That is not true. My attitude has been throughout this case to respect the OPA, the legal staff of the OPA, and the Court, and to prevent this case from going to trial under the circumstances stated, because I thought

the law was so uncertain and the attitude of the Court was such that this was the best way out of it, because I couldn't conscientiously have them testify that they did not do some of the things they are accused of, and I simply told them to do what I thought was the best for everybody, including the OPA and everybody else, in connection with the matter. And I had every hope, and every right to expect, that the Probation Officer would make a recommendation to your Honor that there be a fine according to the understanding had with the United States Attorney's representative, and that he reported that he had referred it to the OPA, and that the Probation Officer had agreed to it. Now, as I said before, if the Court will modify the judgment on this plea so that it will come in the neighborhood of what we felt it would be at the time of the plea, and, if not, we will be happy to try the case.

Your Honor, as I said before, I feel terribly here about it. I want to respect the Courts; I want to respect the United States Attorney's office; and I want to respect the Price Administration Office; and I want to do my duty by my clients and I want to do my duty by my country. I have put this matter up to the Court in the way I have, just as it occurred, and I had no thought that there would be anything but a fine in the neighborhood of $125.00, and, as I said before, I sincerely hope that, in order to vindicate their rights, that they may be allowed to do that. [39]

Mr. Carr: I failed to state, your Honor, our

position with respect to that proposition. I do take a definite stand. If they have pleaded guilty under circumstances where they didn't understand that there would not be any compromise offers, the whole thing should be set aside, and we should be allowed to proceed in the regular course at the trial, and not make a fire sale out of this proposition.

Mr. Preston: I don't like chiseling and fire sales, your Honor.

The Court: When you presented this matter you said you had to file your notice of appeal by tomorrow?

Mr. Preston: Yes, your Honor.

The Court: Is it your understanding that the submission of this motion holds the matter in abeyance?

Mr. Preston: I don't know whether it does or not.

The Court: The reason I asked is so that I will know whether it is essential that the matter be decided at this time.

Mr. Preston: The filing of notice of appeal might oust the Court of jurisdiction.

The Court: That would be a happy solution for the Court.

Mr. Preston: I think the Court should act, if possible, in the matter.

The Court: I can act. I feel that there is no serious conflict in the affidavits except as to the report of the Probation Officer. And it is true, according to Judge Preston's statement, that he was

advised, before the Court pronounced judgment, that the Probation Officer had recommended a substantial fine. So, in effect, the two statements are not in serious conflict in that regard.

Judge Preston places the Court in a rather peculiar [40] position, because of our many years of friendship. I first got acquainted with him when he was touring the state as a candidate for Associate Justice of the Supreme Court, and I met him at a bar meeting in San Bernardino, and he comes here this morning and makes a plea for himself, rather than for the defendants in the case. If it was a personal matter, there would be no question as to what I would do. If it was simply a question of this Court's favoring one party over another, I certainly would like to accommodate Judge Preston.

I think I should make this statement, that the Court has felt that the imposition of fines for carrying on a black market is about as effective as fines were in enforcing prohibition. I realize that nothing stopped the violation of the Prohibition Act, either jail or fines. But the Court's attention has been called to the fact that people have been fined for violation of the price ceilings and have gone out of court and even bragged about the fact that they got off easy, that it was profitable to violate the law. Just a short time ago I imposed what I thought was a heavy fine upon a defendant, and he couldn't withhold his mirth and happiness over the fine imposed until he got out of the courtroom; it was right in front of me. So I had come to the conclusion, of my own volition, that there is only one

way to put a little sting in this, and that is to either fine them such an amount that it will really hurt, or to include a jail sentence along with the fine. The report of the Probation Officer indicated that these men, and particularly the father, if a heavy fine had been imposed, such as was in contemplation of Congress, would put them out of business; that each of them was subject to a fine of $10,000.00 and each was subject to a sentence of one year on each count. The report of the Probation Officer indicated that the father could stand what the [41] Court felt was a substantial fine without hurting him financially and perhaps seriously interfering with his future operations in business. So I decided in my own mind that I would give a fine that was 10 per cent of the maximum provided by Congress and give a jail sentence, not only as punishment to this party, but that it might deter others that might be so inclined. The fact is that I sentenced three other men to jail on the same day for a violation of the OPA regulations, giving all of them much heavier sentences than I gave the father in this case. I gave two men ninety days and one six months.

I am sorry that Judge Preston appeals to the Court as a personal matter of his own relationship with his clients, and any intimation that the Court is singling out his clients for punishment is absolutely untrue. As far as making a recommendation is concerned, the Probation Officer did make a recommendation. The only break in the whole proceeding is that the Court exercised its own independent judgment. That seems to have been the

trouble in this case. I don't know whether I should do that or not, or whether I should let counsel and the United States Attorney bind the Court in its enforcement of the law.

Mr. Preston: It is a question of what the defendants had a right to think, your Honor.

The Court: It isn't a question of what they had a right to think. They were advised, according to your testimony, that it was a matter that would rest entirely within the discretion of the Court, and you advised them in advance of your discussion with the United States Attorney's office as to what precedents had been established, that, according to other judgments, their fines would not exceed $500.00. Really, if it wasn't for the fear that one man's [42] liberty is at stake, it would almost be beyond comprehension that a man of Judge Preston's ability and experience and standing would be misled or his clients would be misled.

Mr. Preston: I have seen this very Court accept the recommendation of the United States Attorney.

The Court: I did accept his recommendation in an antitrust case, where, after many months of negotiations, and the Court not knowing anything about the general scheme of things, the Court did accept the Government's recommendations as to the fines that were to be imposed.

Mr. Preston: I have seen hundreds of instances myself by the Judges.

The Court: I followed his recommendation. But there was no recommendation made to me in this case, and you were not advised that any recom-

mendation by the United States Attorney would be made to me in this case.

Mr. Preston: No, but I thought the Probation Officer would make a recommendation to you, not the United States Attorney.

The Court: The only thing is that the Courts and Probation Officers, and even the United States Attorneys, don't agree. You undoubtedly have had the experience that when the Probation Officer recommended leniency you haven't been willing to follow his recommendation. I know that was true when I was United States Attorney. I have recommended probation, and the Courts have refused to follow my recommendation.

Mr. Preston: I think this Act contemplates that the Probation Officer shall make recommendations.

The Court: It does not contemplate that the Court is bound by his recommendations.

Mr. Preston: No. But you have a right to feel that they are selected men, and that you have a right to rely upon assurances they make.

The Court: Are you going to rest on that, that you have a right to rely on the Court following their recommendations?

Mr. Preston: The defendants have a right to rely upon an Officer of the Court doing what he promises to do in the way of a recommendation. [43] to the Court, and he didn't recommend a $125.00 fine.

The Court: And your affidavits in this case do not indicate that Mr. Kinnison agreed to recommend that.

Mr. Preston: Mr. Kinnison told me that he couldn't make the recommendation, but that he could speak to the Probation Officer and he would do it. I waited until he did that and reported back that it was O.K., and then, on that assurance, I told the defendants, and they agreed to do it. They didn't want to do it.

The Court: Then on the morning of the plea you were advised that the Probation report had the word "substantial" in it.

Mr. Preston: He said the word "substantial" was in there, yes, your Honor.

The Court: What is the difference between "substantial" and "heavy"? We are not going to argue about that. There is another thing in this case, and that is that this case was set down for trial and would have been tried before this, but two days before trial they came in here before the Court and withdrew their pleas of not guilty and entered new pleas of guilty.

Mr. Preston: And I told you at that time, your Honor, that we had made an arrangement with the United States Attorney.

The Court: As to the dismissal of three counts.

Mr. Preston: Yes, and the fact that we were negotiating, your Honor.

The Court: I certainly wouldn't protest against your negotiating with the United States Attorney, because that is a common practice. You had six counts against you, and you got four of them dismissed. The only unfortunate part in this case from your viewpoint is that the Court had con-

cluded that it was going to put a little sting in the violations of these OPA Rules and Regulations. I am also aware of the fact that the packing industry has had its difficulties. I am also aware of the fact that the public generally is very much interested in putting a stop to the black market and in maintaining price levels. I am going to take the matter under submission. I want to think it over, but I will decide it sometime today." [44]

That thereafter and on said 2nd day of September, 1943, an order was entered herein denying defendants' motion to vacate judgments, for leave to withdraw pleas of guilty and to re-enter defendants' pleas of not guilty, to set aside the sentences imposed, and for a new trial, to which action of the Court the defendants excepted and their exceptions were allowed by the Court.

That thereafter and on said 2nd day of September, 1943, an order was entered allowing defendants five days additional stay of execution of the judgments rendered herein.

That thereafter and on said 2nd day of September, 1943, the defendant Aron Rosensweig filed Notice of Appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, which notice and the grounds of appeal are in the words and figures following, to wit:

(Title of Court and Cause omitted.)

"Name and Address of Appellant's Attorneys:

John W. Preston and Samuel Mirman, 712 Rowan

Building, 458 South Spring Street, Los Angeles, California.

Offense: Violation of Emergency Price Control Act of 1942, 56 Stat. 23, January 30, 1942. Count One: Did knowingly, wilfully and unlawfully offer for sale, sell and deliver to E. E. Surhart, one side of beef for sum $88,91, which side of beef had a maximum price of $68.18; etc., and Count Three: Did knowingly, wilfully and unlawfully give a false invoice No. 9373, to E. E. Surhart, etc., as more fully set forth in the said two counts of the Information.

Date of Judgment: August 30, 1943.

Brief Description of Judgment or Sentence:

That defendant is guilty of the offense as charged in Counts One and Three of the Information and Counts 2, 4, 5 and 6 dismissed; that defendant be imprisoned for thirty (30) days in a jail and pay a fine unto the United States of America in the sum of One Thousand ($1000.00) Dollars on Count One; and it is further ordered that the [45] imposition of sentence on Count Three is suspended for the period of two (2) years and defendant is placed on probation for said period of two years commencing at the expiration of the sentence on Count One on the condition that the defendant shall not wilfully violate any of the price regulations or any law made to supercede them.

Name of Prison Where Now Confined If Not on Bail:

Remanded and now held by United States Marshal.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

I elect not to enter upon the service of sentence pending appeal.

Dated: September 2, 1943.

ARON ROSENSWEIG
Appellant

GROUND OF APPEAL:

1. That the Information and each count thereof fail to charge a public offense against the laws of the United States of America.

2. That the trial court should have sustained appellant's demurrer to the Information and to each count thereof.

3. That the Information and each count thereof fail to state facts sufficient to constitute a public offense against the laws of the United States of America.

4. That the trial court should have granted appellant's motion to quash the Information.

5. That the Emergency Price Control Act of 1942 (56 Stats. 23, January 30, 1942) and particularly Sections 2 and 201, are void as an attempted delegation of legislative power to an Administrator in violation of Article One, Section One of the Constitution of the United States of America.

6. That the Emergency Price Control Act of 1942 and particularly Section 2 thereof, in delegat-

ing power to the Price Administrator to [46] establish and maintain maximum prices for commodities, violates Article One, Section One, of the Constitution of the United States of America and is void in that it fails to prescribe adequate standards to guide the Administrator in the exercise of the power granted.

7. The Emergency Price Control Act, as applied to appellant, denies him due process of law in derogation of the Fifth Amendment to the Constitution of the United States of America, and is therefore unconstitutional and void.

8. That Maximum Price Regulation 169, promulgated by the Price Administrator, fixing maximum wholesale prices for beef, is violative of the Fifth Amendment to the Constitution of the United States and void in that the Administrator, in fixing such prices, failed to give due consideration to the various factors affecting cost of production and distribution of meat in the industry as a whole.

9. That the Emergency Price Control Act of 1942 denies appellant the due process of law guaranteed him by the Fifth Amendment to the Constitution of the United States in that by Secs. 203 and 204(d) of said Act, the forum in which appellant is prosecuted for a violation of said Act and the Maximum Price Regulation promulgated pursuant thereto, is precluded from questioning the validity of said Act and Regulation.

10. That the Emergency Price Control Act of 1942, and particularly sections 2 and 3 thereof, are as to appellant void in that arbitrary, unreasonable

and discriminatory classifications of commodities and prices are created in violation of the Fifth Amendment to the Constitution of the United States.

11. That Maximum Price Regulation 169, for a violation of which appellant was convicted, deprives appellant of due process of the Fifth Amendment to the Constitution of the United States in that said Regulation unlawfully classifies appellant as a wholesaler of a commodity processed from an agricultural commodity. [47]

12. That the failure of the Price Administrator to fix or regulate the price of livestock prior to promulgating Maximum Price Regulation 169, for a violation of which appellant was convicted, rendered said Regulation invalid because in violation of the Fifth Amendment to the Constitution of the United States.

13. That the trial court was without jurisdiction to enter said judgment and sentence as to Appellant because of the promises made to the Appellant by the Assistant United States District Attorney that the Probation Officer, if Appellant would plead guilty to two counts, would recommend to the Judge of said Court that a fine of not to exceed One Hundred Twenty-five ($125.00) Dollars on each Count of the Information so plead to by Appellant, would be imposed.

14. That the trial court erred and committed an abuse of discretion in refusing to vacate the judgment and sentence as to Appellant, grant him a new trial, and permit him to withdraw his plea of guilty

and enter a plea of not guilty to each Count of the Information."

That thereafter and on said 2nd day of September, 1943, the defendant Abe Rosensweig filed Notice of Appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, which notice and the grounds of appeal are in the words and figures the same as stated in the Notice of Appeal of the defendant Aron Rosensweig, and therefore are not stated in detail in this Bill of Exceptions.

That thereafter and on the 7th day of September, 1943, an order admitting defendants to bail and staying execution of the fines imposed upon them was filed herein, and each of the defendants deposited into the registry of the District Court the sum of One Thousand Dollars ($1000.00) to guarantee the payment of the fine imposed upon him.

That thereafter and on the 8th day of September, 1943, each of the defendants herein filed a cash bail bond for the sum of Two Hundred and Fifty Dollars ($250.00) and paid said sum into the registry of the District Court. [48]

That thereafter and on the 16th day of September, 1943, a stipulation for the consolidation of the respective appeals of the defendants Aron Rosensweig and Abe Rosensweig from the judgments entered against them was filed, and said stipulation is in the words and figures following, to wit:

(Title of Court and Cause omitted.)

"It Is Hereby Stipulated by and between plaintiff and the appealing defendants, Aron Rosensweig and Abe Rosensweig, in the above entitled action, that

the appeal of the respective filing defendants from the Judgments, and each of them, of the above entitled Court, made and entered in the above entitled cause against them, and each of them, on August 30, 1943, may be presented to the United States Circuit Court of Appeals, in and for the Ninth Circuit, as one appeal, and may be presented on one record, and prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors and one bill of exceptions.

Dated: September 16th, 1943.

CHARLES H. CARR,
United States Attorney

By (Signed) CHARLES H. CARR
Ass't. United States Attorney
for Plaintiff

JOHN W. PRESTON &
SAMUEL MIRMAN

By (Signed) JOHN W. PRESTON
Attorneys for defendants''

That thereafter and on said 16th day of September, 1943, an order was entered allowing the defendants herein to consolidate their respective appeals and to present the same on one record, which order is in the words and figures following, to wit:
(Title of Court and Cause omitted.)

"It appearing that the plaintiff and appealing defendants in the above entitled action have stipulated that the appealing [49] defendants may present their appeal on one record, and the necessity therefor appearing to this Court;

It Is Hereby Ordered that the defendants, Aron Rosensweig and Abe Rosensweig, may consolidate and present their respective appeals as one appeal, and that said appeals may be presented on one record and prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors and one bill of exceptions.

Dated: September 16, 1943.
(Signed) PAUL J. McCORMICK
Judge"

The foregoing contains a full, true and correct copy of all proceedings had and of all the testimony introduced and received in evidence in this cause at the hearing thereof.

Wherefore, the defendants present the foregoing as their proposed Bill of Exceptions in this cause, and pray that the same be settled and allowed.

Dated this 28th day of October, 1943.

JOHN W. PRESTON and
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for Defendants

(Title of Court and Cause omitted.)

It Is Hereby Agreed that the foregoing proposed Bill of Exceptions is full, true and correct, and we stipulate that the same may be settled and allowed by the Court and filed herein as the engrossed Bill of Exceptions.

Dated this 1st day of November, 1943.

CHARLES H. CARR
United States Attorney
RAY H. KINNISON
Assistant United States Attorney
Attorneys for Plaintiff
JOHN W. PRESTON and
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for Defendants.

[50]

The foregoing Bill of Exceptions, as stipulated to by attorneys for plaintiff and defendants, is a full, true and correct Bill of Exceptions and embraces and contains all of the evidence adduced at the trial of the above entitled cause and all statements of Counsel and acts and rulings of the Court occurring at the trial of said cause and the proceedings taken thereafter; and said Bill of Exceptions is hereby ratified and approved by the undersigned Judge of this Court, who presided at the trial of this cause, as a full, true and correct Bill of Exceptions duly and regularly presented and settled within the time allowed by law and as extended by the Court and within the term in which the judgment was rendered as extended by law and the orders of this Court. Such part of the testimony as is given in the form of questions and answers is deemed to be necessary to be put in that form for a full and complete understanding thereof.

Dated this 2 day of Nov, 1943.

BEN HARRISON

Judge of the District Court of the United States for the Southern District of California (Central Division).

[Endorsed]: Filed Nov. 2, 1943. [51]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR IN BEHALF OF DEFENDANTS ARON ROSENSWEIG AND ABE ROSENSWEIG

1. The District Court erred in overruling defendants' demurrer to the information heerin, because said information and each and every count thereof fails to state facts sufficient to constitute a public offense against the laws of the United States.

2. The District Court erred in overruling defendants' demurrer to the information herein, because the Emergency Price Control Act of 1942 (C. 26, 56 Stat. 23, 50 U.S.C.A. App. Section 901, et seq) as amended by the Inflation Control Act of October 2, 1942 (C. 578, 56 Stat. . . . ., 50 U.S.C.A. App. Section 961, et seq) is unconstitutional and invalid in that said Act as amended purports to improperly delegate the legislative power to the Price Administrator in violation of Article I, Section 1, of the Constitution of the United States.

3. The District Court erred in overruling defend-

ants' demurrer herein, because the Emergency Price Control Act of 1942 (C. 26, 56 Stat. 23, 50 U.S.C.A. App. Section 901, et seq.) as amended by the Inflation Control Act of October 2, 1942 (C. 578, 56 Stat. ...., 50 U.S.C.A. App. Section 961, et seq.) is unconstitutional and invalid because said Act as amended is in conflict with the Fifth Amendment to the Constitution of the United States in that the classifications attempted to be made in said Act are unjust, unreasonable and arbitrary and deprive appellants of their liberty and property without due process of law and of their private property without just compensation.

4. The District Court erred in overruling defendants' demurrer herein, because the Emergency Price Control Act of 1942 (C. 26, 56 Stat. 23, 50 U.S.C.A. App. Section 901, et seq.) as amended by the Inflation Control Act of October 2, 1942 (C. 578, 56 Stat. ...., 50 U.S.C.A. App. Section 961, et seq.) and Revised Maximum Price Regulations Nos. 169 (7 Fed. Reg. No. 10381) and 148 (7 Fed. Reg. No. 8609), as amended, issued thereunder by the Price Administrator are unconstitutional and invalid because in conflict with the Fourth and Fifth Amendments to the Constitution of the United States, and deprive defendants of their liberty and property without due process of law and of their private property without just compensation.

5. The District Court erred in refusing to adjudge that Revised Maximum Price Regulation No. 169 (7 Fed. Reg. No. 10381), as amended, effective April 3, 1943, promulgated by the Price Adminis-

trator and establishing wholesale prices for meat, is in violation of the Fifth Amendment to the Constitution of the United States, because said Regulation does not give due or any adequate consideration to the various factors entering into the production, processing and distribution of meat by defendants and others similarly situated, or by the meat industry as a whole thereby depriving defendants of their liberty and property without due process of law.

6. The District Court erred in overruling defendants' demurrer and in refusing to adjudge that Section 204(d) of the Emergency Price Control Act of 1942, as amended, is unconstitutional and invalid in that it deprives defendants of their right, by way of defense to the information filed against them herein to attack the constitutionality and validity of the Revised Maximum Price Regulations promulgated by the Price Administrator, in violation of the Fifth Amendment to the Constitution of the United States.

7. The District Court erred in refusing to adjudge that Revised Maximum Price Regulation No. 169 (7 Fed. Reg. No. 10381), as amended, promulgated by the Price Administrator, is invalid because: (a) It wrongfully fails to establish maximum prices for livestock as an agricultural commodity, (b) wrongfully classifies appellants as wholesalers of a commodity processed from such livestock, as an agricultural commodity, and (c) said Regulation wrongfully fails to allow appellants a fair and reasonable, or any, profit on the processed

commodity, thereby depriving them of their property in violation of the Fifth Amendment to the Constitution of the United States.

8. The District Court erred in denying appellants' motion for an order to vacate the judgments rendered herein, to set aside the sentences imposed thereunder, to grant appellants leave to withdraw their respective pleas of guilty and reenter their former pleas of not guilty, and for a new trial.

9. The District Court erred and was guilty of an abuse of discretion in refusing to vacate the judgments rendered herein and to allow appellants to withdraw their respective pleas of guilty and reenter their former pleas of not guilty to the information and to each and every count thereof, and in refusing appellants a new trial, thereby depriving them of their liberty and property contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

10. The District Court erred in refusing to consider, and in disregarding the negotiations and agreements between appellants and the United States Attorneys whereby appellants were induced to withdraw their respective pleas of not guilty and enter pleas of guilty upon the representations of the United States Attorneys that nominal fines only, without further punishment, would be satisfactory to the Government.

Wherefore, and by reason of said errors and other manifest errors appearing in the record here, the defendants pray that the judgments of conviction

be set aside and that they be discharged from custody.

Respectfully submitted,
JOHN W. PRESTON and
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for Defendants.

I hereby acknowledge receipt of a copy of the within Assignment of Errors, etc., this 2nd day of November, 1943.

CHARLES W. CARR,
United States District Attorney
By RAY H. KINNISON
Asst. U. S. Atty.

[Endorsed]: Filed Nov. 2, 1943.

[Endorsed]: No. 10540. United States Circuit Court of Appeals for the Ninth Circuit. Aron Rosensweig and Abe Rosensweig, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 15, 1943.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10540

ARON ROSENSWEIG and
ABE ROSWENSWEIG,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY UNDER RULE 19 (C.C.A. 9TH CIRCUIT).

Notice is hereby given that appellants Aron Rosensweig and Abe Rosensweig adopt as their points on appeal the assignments of error appearing in the transcript of the record herein; and that appellants desire that the transcript of the record, bill of exceptions, and assignments of error, as certified, be printed in their entirety.

Dated this 17th day of November, 1943.

ARON ROSENSWEIG and
ABE ROSENSWEIG
Appellants
JOHN W. PRESTON and
SAMUEL MIRMAN
By JOHN W. PRESTON
Attorneys for Appellants

Receipt of a copy of the within Statement of Points Upon Which Appellants Intend to Rely Under Rule 19 (C.C.A. 9th Circuit) is hereby acknowledged this 18 day of November, 1943.

CHARLES H. CARR,
United States Attorney
By RAY H. KINNISON,
Asst. U. S. Atty HKM

[Endorsed]: Filed Nov. 19, 1943. Paul P. O'Brien, Clerk.